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THE
EDUCATION ACTS,
1870—1902,

AND OTHER ACTS RELATING
TO EDUCATION.

WITH SUMMARY OF THE STATUTORY
PROVISIONS AND NOTES.

BY

SIR HUGH OWEN, G.C.B.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW :

AUTHOR OF THE

“MUNICIPAL CORPORATIONS ACT,” “BALLOT ACT MANUAL,” ETC.

AND AN APPENDIX,

CONTAINING THE SCHOOL SITES ACTS AND ACTS RELATING TO EDUCATION
OF CHILDREN, RULES AND REGULATIONS OF THE BOARD OF EDUCA-
TION AND MEMORANDA ISSUED BY THE BOARD ON THE ACT
OF 1902, RULES AND REGULATIONS OF THE LOCAL
GOVERNMENT BOARD, ORDERS IN COUNCIL, ETC.

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P R E F A C E.

As the Education Act of 1902 contains the provisions with regard to the authorities on whom will devolve the local administration of the Education Acts, it takes the first place amongst the Acts included in this volume. The Elementary Education Acts and certain other Acts relating to education appear in the order of date.

The Elementary Education Acts are given with the omission of those provisions which, except in the case of London, are repealed from the "appointed day" under sec. 27 of the Act of 1902. The modifications under that Act are shown either in the Sections or in the Notes on the Sections. The Notes have been revised and brought up to date.

The Statutes included under the title of the Education Acts are now so numerous that it has been deemed desirable to include in the volume a summary of the enactments, arranged under a series of headings, which will facilitate a ready reference to the provisions on any particular subject.

• I have to acknowledge my indebtedness to Mr. Charles Knight, B.A., who, in addition to other aid, has carried the volume through the press and prepared the index.

HUGH OWEN.

I, PUMP COURT, TEMPLE,
March, 1903.

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A. & E.	Adolphus and Ellis.
B. & A.	Barnewall & Alderson.
B. & C.	Barnewall & Creswell.
E. & B.	Ellis & Blackburn.
E. & E.	Ellis & Ellis.
J. P.	Justice of the Peace.
Jur.	Jurist.
L. G. C.	Local Government Chronicle.
L. J.	Law Journal.
L. R.	Law Reports.
L. T.	Law Times.
Taunt.	Taunton.
T. L. R.	Times Law Report.
W. R. ...	Weekly Reporter.
[] Ch.	Law Reports. Chancery.
[] Q. B. D.	Law Reports. Queen's Bench.
[] A. C.	Law Reports. Appeal Cases.

SUMMARY

OF THE PROVISIONS OF

THE EDUCATION ACT, 1902, THE ELEMENTARY EDUCATION ACTS, AND OTHER ACTS RELATING TO EDUCATION.

THE EDUCATION ACT, 1902.

EXTENT AND COMMENCEMENT OF ACT.

THE Education Act, 1902, which received the Royal Assent on the 18th December, 1902, extends only to England and Wales, exclusive of London, except as expressly provided. That exception refers to an extension of the period during which the School Board for London may carry on the work of the schools and classes to which the Education Act, 1901, as renewed by the Education Act, 1901, (Renewal) Act, 1902, relates (2 Edw. 7, c. 42, sec. 27).

The Act, except as expressly provided, comes into operation on "the appointed day." The appointed day will be the 26th of March, 1903, or such other day, not being more than eighteen months later, as the Board of Education may appoint. Different days may be appointed for different purposes, and for different provisions of the Act, and for different councils (sec. 27).

The provisions which come into operation before the appointed day are the following :—

(1.) No election of members of a school board shall be held after the passing of the Act, and the term of office of

members of any school board holding office at that date, or appointed to fill casual vacancies after that date, shall continue to the appointed day. The Board of Education may make orders with respect to any matter which it appears to them necessary or expedient to deal with for the purpose of carrying this provision into effect, and any order so made will operate as if enacted in the Act (Second Schedule (10)).

(2.) During the period between the passing of the Act and the appointed day, the managers of any public elementary school, whether provided by a school board or not, and any school attendance committee, shall furnish to the council, which will on the appointed day become the local education authority, such information as the council may reasonably require (Second Schedule (15)).

(3.) It shall be the duty of every authority whose powers, duties, and liabilities are transferred by this Act to liquidate, so far as practicable, before the appointed day, all current debts and liabilities incurred by that authority (Second Schedule (8)).

(4.) When an authority having powers under the Act are the council of a non-county borough or urban district, the council may, at any time after the passing of the Act, by agreement with the council of the county, and with the approval of the Board of Education, relinquish in favour of the council of the county any of their powers and duties under the Act, and in that case the powers and duties so relinquished shall cease, and the area of the authority, if the powers and duties relinquished include powers as to elementary education, shall, as respects those powers, be part of the area of the county council (sec. 20).

(5.) The period during which local authorities may, under the Education Act, 1901, as renewed by the Education Act, 1901 (Renewal) Act, 1902, empower school boards to carry on the work of the schools and classes to which those Acts relate shall be extended to the appointed day, and in the case of London to the 26th March, 1904 (sec. 27).

The preparation of schemes for the establishment of education committees (see p. 5) and applications with reference to trust deeds with the view to the appointment of foundation managers (p. 34) can be proceeded with forthwith.

The Act may be cited as the Education Act, 1902.

In the following Summary the provisions of the Education Act, 1902, and of the Elementary Education Acts, which are summarised, are those which will, except as regards London apply after the appointed day.

THE CENTRAL AUTHORITY FOR EDUCATION.

Constitution of the Board of Education.

The Board of Education, which has taken the place of the Education Department, including the Department of Science and Art, is the authority charged with the superintendence of matters relating to education in England and Wales. The Board consists of a President and of the Lord President of the Council, unless he is appointed President of the Board, His Majesty's Principal Secretaries of State, the first Commissioner of His Majesty's Treasury, and the Chancellor of the Exchequer. The Board has an official seal, and may appoint such secretaries, officers, and servants as the Board, with the sanction of the Treasury, may determine (62 & 63 Vict., c. 33).

Consultative Committee.

A consultative committee, consisting as to not less than two-thirds of persons qualified to represent the views of universities and other bodies interested in education, may be established by Order in Council for the purpose of advising the Board of Education on any matter referred to them by the Board.

The consultative committee are also to frame, with the approval of the Board of Education, regulations for a

register of teachers to be formed and kept as provided by order in council. The register is to contain the names of the registered teachers arranged in alphabetical order, with an entry in respect to each teacher showing the date of his registration and giving a brief record of his qualifications and experience (sec. 4).

LOCAL EDUCATION AUTHORITIES.

ESTABLISHMENT OF LOCAL EDUCATION AUTHORITIES.

The council of every county and of every county borough are the local education authority for higher education and for elementary education.

In the case of a borough which is not a county borough, and which has a population of over ten thousand, or of an urban district which has a population of over twenty thousand—the population being calculated according to the census of 1901—the council of the borough or urban district, and not the council of the county in which the borough or district is included, are the local education authority for elementary education (2. Edw. 7, c. 42, secs. 1 and 23 (8)).

The council of a non-county borough or urban district may, however, at any time after the passing of the Act, by agreement with the council of the county and with the approval of the Board of Education, relinquish in favour of the council of the county their powers and duties as a local education authority for elementary education, and in that case the borough or district for purposes of elementary education will form part of the area of the county (sec. 20).

The council of the Isles of Scilly are the local education authority for the Scilly Islands (sec. 26).

Where councillors are elected for a county electoral division consisting wholly or partly of a borough or urban district for which the council of the borough or district

are the local education authority for elementary education, those councillors are not to vote in respect of any question arising before the county council which relates to matters with regard to education other than higher education (sec. 23 (3)).

Disqualification of Members.

The disqualification of any persons who on the 18th December, 1902, were members of any council, and who will become disqualified for office in consequence of the Act, will not, if the council so resolve, take effect until a day fixed by the resolution, not being later than the next ordinary day of retirement of councillors in the case of a county council, the next ordinary day of election of councillors in the case of the council of a borough, and the 15th of April, 1904, in the case of an urban district council (Second Schedule (9)).

Teachers in a school maintained but not provided by a local education authority are in the same position as regards disqualification for office as teachers in a school provided by the authority (sec. 23 (7)).

EDUCATION COMMITTEES.

Establishment of Education Committees.

It is the duty of every council having powers as a local education authority, whether for higher education or elementary education, to establish an education committee or committees constituted in accordance with a scheme made by the council and approved by the Board of Education.

The council of a non-county borough or urban district, although not a local education authority, are also to establish an education committee, unless they determine that such a committee is unnecessary (secs. 3 and 17 (1)).

As to schemes for the establishment of education committees, see p. 6. .

Delegation of Powers to Education Committee.

All matters relating to the exercise by the council of their powers as to education, except the power of raising a rate or borrowing money, are to stand referred to the education committee, and the council, before exercising any such powers, are, unless in their opinion the matter is urgent, to receive and consider the report of the education committee with respect to the matter in question. The council may also delegate to the education committee, with or without any restrictions or conditions as they think fit, any of their powers as to education, except the power of raising a rate or borrowing money (sec. 17 (2)).

SCHEMES FOR ESTABLISHMENT OF EDUCATION COMMITTEES.

Provisions of Schemes.

Every scheme for the establishment of an education committee by a council is to provide—

(a) for the appointment by them of at least a majority of the committee, and the persons so appointed are to be persons who are members of the council, unless, in the case of a county, the council otherwise determine ;

(b) for the appointment by the council, on the nomination or recommendation, where it appears desirable, of other bodies (including associations of voluntary schools), of persons of experience in education, and of persons acquainted with the needs of the various kinds of schools in the area for which the council act ; and

(c) for the inclusion of women as well as men among members of the committee.

The scheme is also to provide for the appointment, if desirable, of members of school boards existing on the 18th December, 1902, as members of the first education committee (2 Edw. 7, c. 42, sec. 17 (3)).

Any such scheme may, for all or any purposes of

higher education or elementary education, provide for the constitution of a separate education committee for any area within a county, or for a joint education committee for any area formed by a combination of counties, boroughs, or urban districts, or of parts of the same. In the case of a joint education committee it will suffice if a majority of the members are appointed by the councils of any of the counties, boroughs, or districts, out of which or parts of which the area is formed (sec. 17 (5)).

A scheme for establishing an education committee of the council of any county or county borough in Wales or of the county of Monmouth or county borough of Newport is to provide that the county governing body constituted under the Welsh Intermediate Education Act, 1889, for any such county or county borough is to cease to exist, and the scheme is to make such provision as appears necessary or expedient for the transfer of the powers, duties, property, and liabilities of any such body to the local education authority (sec. 17 (8)).

Any scheme may contain such incidental or consequential provisions as may appear necessary or expedient (sec. 21 (2)).

Approval of Scheme by Board of Education.

Before approving a scheme, the Board of Education are to take such measures as may appear expedient for the purpose of giving publicity to the provisions of the proposed scheme, and, before approving any scheme which provides for the appointment of more than one education committee, they are to satisfy themselves that due regard is paid to the importance of the general co-ordination of all forms of education (sec. 17 (6)).

A scheme when approved has effect as if it were enacted in the Act, and any such scheme may be revoked or altered by a scheme made in like manner and having the same effect as the original scheme (sec. 21 (3)).

*Scheme to be made by Board of Education on Default of
Local Authority.*

If a scheme has not been made by a council and approved by the Board of Education within twelve months after the 18th of December, 1902, the Board may make a provisional order for the purposes for which a scheme might have been made (sec. 17 (7)).

Sections 297 and 298 of the Public Health Act, 1875 (which relate to provisional orders), apply to any such provisional order as if it were made under that Act, but references to a local authority are to be construed as references to the authority to whom the order relates, and references to the Local Government Board to be construed as references to the Board of Education (sec. 21 (1)).

The provisional order may contain such incidental or consequential provisions as may appear necessary or expedient (sec. 21 (2)).

A provisional order made for the purposes of a scheme may be revoked or altered by a scheme made in like manner and having the same effect as an original scheme (sec. 21 (3)).

*Disqualification of Persons as Members of Education
Committee.*

Any person who by reason of holding an office or place of profit, or having any share or interest in a contract or employment, is disqualified for being a member of the council appointing the education committee, is also disqualified for being a member of the education committee. No such disqualification applies to a person by reason only of his holding office in a school or college aided, provided, or maintained by the council (sec. 17 (4)).

Qualification of Women.

A woman is not disqualified either by sex or marriage for being a member of an education committee (sec. 23 (6)).

Meetings, Proceedings, &c., of Education Committees.

The council by whom an education committee is established may make regulations as to the quorum, proceedings, and place of meeting of the committee, but, subject to such regulations, the quorum, proceedings, and place of meeting of the committee will be such as the committee determine.

The chairman of the education committee at any meeting of the committee has, in case of an equal division of votes, a second or casting vote.

The proceedings of an education committee will not be invalidated by any vacancy among its members or by any defect in the election, appointment, or qualification of any of the members.

Minutes of the proceedings of an education committee are to be kept in a book provided for the purpose, and a minute of those proceedings, signed at the same or next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting of the committee at which the minute is signed, is to be received in evidence without further proof.

Until the contrary is proved, the education committee are to be deemed to have been duly constituted and to have power to deal with any matters referred to in their minutes.

The education committee may, subject to any directions of the council, appoint such and so many sub-committees, consisting either wholly or partly of members of the committee, as the committee think fit (2 Edw. 7, c. 42, First Schedule).

HIGHER EDUCATION.

POWERS AND DUTIES OF LOCAL EDUCATION
AUTHORITIES.

The local education authority, *i.e.* the council of each county and county borough, are to consider the educational needs of their area and take such steps as seem to them desirable, after consultation with the Board of Education, to supply or aid the supply of education other than elementary, and to promote the general co-ordination of all forms of education (2 Edw. 7, c. 42, sec. 2 (1)).

The local education authority in exercising their powers are to have regard to any existing supply of efficient schools or colleges, and to any steps already taken for the purposes of higher education under the Technical Instruction Acts, 1889 and 1891 (sec. 2 (2)).

The Technical Instruction Acts referred to are repealed (Fourth Schedule, Part I.).

The power of a local education authority to supply or aid the supply of education other than elementary includes a power to train teachers and to supply or aid the supply of any education except where that education is given in a public elementary school (sec. 22 (3)).

The power of the authority to supply or aid the supply of education other than elementary also includes power to make provision for the purpose outside their area in cases where they think it expedient to do so in the interests of their area, and also power to provide or assist in providing scholarships for and to pay or assist in paying the fees of students ordinarily resident in the area of the local education authority at schools or colleges or hostels within or without that area (sec. 23 (2)).

The expression "college" includes any educational institution whether residential or not (sec. 24 (4)).

The powers of the local education authority further include the provision of vehicles or the payment of reasonable travelling expenses for teachers or children attending

school or college, whenever the council consider that such provision or payment is required by the circumstances of their area or of any part of that area (sec. 23 (1)).

As to schemes for the establishment by the local education authority of an education committee and the delegation by them of their powers to the committee, see pp. 5, 6.

Arrangements between Councils.

A local education authority may make arrangements with the council of any county, borough, district, or parish, whether a local education authority or not, for the exercise by the council, on such terms and subject to such conditions as may be agreed on, of any powers of the authority in respect of the management of any school or college within the area of the council (sec. 20 (a)).

POWERS OF COUNCILS OF BOROUGHES OR URBAN DISTRICTS WHEN NOT LOCAL EDUCATION AUTHORITIES.

The council of any non-county borough or urban district have power as well as the county council to spend such sums as they think fit for the purpose of supplying or aiding the supply of education other than elementary. The amount raised by the council of a non-county borough or urban district for the purpose in any year out of rates is not, however, to exceed the amount which would be produced by a rate of one penny in the pound (2 Edw. 7, c. 42, sec. 3). The amount which would be produced by any rate in the pound is to be estimated in accordance with regulations made by the Local Government Board (sec. 23 (4)).

They have also the same power as a local education authority for making arrangements such as those referred to above in respect of the management of any school or college (sec. 20 (a)).

Any such council may at any time after the 18th December, 1902, by agreement with the council of the county, and with the approval of the Board of Education, relinquish in favour of the council of the county any of these powers (sec. 20).

Where any council relinquish their powers and duties in favour of a county council, any property or rights acquired and any liabilities incurred, for the purpose of the performance of the powers and duties relinquished, including any property or rights vested or arising, or any liabilities incurred, under any local Act or trust deed, are to be transferred to the county council (Second Schedule (2)).

EXPENSES OF HIGHER EDUCATION.

For the purpose of supplying or aiding the supply of education other than elementary, the local education authority are to apply all or so much as they deem necessary of the sums received by them in respect of the residue under sec. 1 of the Local Taxation (Customs and Excise) Act, 1890 (including any balance remaining unexpended and unappropriated by any council at the appointed day), and are to carry forward for the like purpose any balance thereof which may remain unexpended. They may also spend such further sums as they think fit. But the amount to be raised by the council of a county for the purpose in any year out of rates is not to exceed the amount which would be produced by a rate of twopence in the pound, or such higher rate as the county council, with the consent of the Local Government Board, may fix (2 Edw. 7, c. 42, sec. 2 (1) and Second Schedule (5)).

The amount which would be produced by any rate in the pound is to be estimated for the purpose of the foregoing provision in accordance with regulations made by the Local Government Board (sec. 23 (4)).

All receipts in respect of any school maintained by a local education authority, including any parliamentary grant, are to be paid to that authority (sec. 18 (2)).

The expenses of the local education authority or of the council of a non-county borough or urban district supplying or aiding the supply of education other than elementary, are, so far as not otherwise provided for, to be paid, in the case of the council of a county out of the county fund, and in the case of the council of a borough out of the borough fund or rate, or, if no borough rate is levied, out of a separate rate to be made, assessed, and levied in like manner as the borough rate, and in the case of the council of an urban district other than a borough in manner provided by sec. 33 of the Elementary Education Act, 1876. The county council may, however, if they think fit (after giving reasonable notice to the overseers of the parish or parishes concerned), charge any expenses with respect to education other than elementary on any parish or parishes which, in the opinion of the council, are served by the school or college in connexion with which the expenses have been incurred (sec. 18 (1)).

Where under any local Act the expenses incurred in any borough for the purposes of the Elementary Education Acts are payable out of some fund or rate other than the borough fund or rate, the expenses of the council of the borough for the purposes of education are to be payable out of that fund or rate instead of out of the borough fund or rate (sec. 18 (4)).

Separate accounts are to be kept by the council of a borough of their receipts and expenditure for the purposes of education, and those accounts are to be made up and audited in like manner and subject to the same provisions as the accounts of a county council, and the enactments relating to the audit of those accounts and to all matters incidental thereto and consequential thereon, including the penal provisions, will apply in lieu of the provisions of the Municipal Corporations Act, 1882, relating to accounts and audit (sec. 18 (3)).

BORROWING FOR PURPOSES OF HIGHER EDUCATION.

The local education authority and the council of a non-county borough or of an urban district supplying or aiding the supply of education other than elementary, may borrow, for purposes of higher education, in the case of a county council as for the purposes of the Local Government Act, 1888, and in the case of the council of a county borough, borough, or urban district as for the purposes of the Public Health Acts, but the money borrowed by a county borough, borough, or urban district council is to be borrowed on the security of the fund or rate out of which the expenses of the council are payable. As to the expenses of local education authorities and councils for higher education, see p. 12. Money so borrowed is not to be reckoned as part of the total debt of a county for the purposes of sec. 69 of the Local Government Act, 1888, or as part of the debt of a county borough, borough, or urban district for the purpose of the limitation on borrowing under sub-secs. 2 and 3 of sec. 234 of the Public Health Act, 1875 (2 Edw. 7, c. 42, sec. 19 and Second Schedule (3)).

RELIGIOUS INSTRUCTION IN SCHOOLS, COLLEGES, OR HOSTELS.

A council, in the application of money for the purposes of higher education under the Act, are prohibited from requiring that any particular form of religious instruction or worship or any religious catechism or formulary which is distinctive of any particular denomination shall or shall not be taught, used, or practised in any school, college, or hostel aided but not provided by them.

No pupil shall, on the ground of religious belief, be excluded from or placed in an inferior position in any school, college, or hostel provided by the council, and no catechism or formulary distinctive of any particular

religious denomination shall be taught in any school, college, or hostel so provided, except in cases where the council, at the request of parents of scholars, at such times and under such conditions as the council think desirable, allow any religious instruction to be given in the school, college, or hostel, otherwise than at the cost of the council. In the exercise of this power no unfair preference shall be shown to any religious denomination.

In a school or college receiving a grant from, or maintained by, a council a scholar attending as a day or evening scholar shall not be required, as a condition of being admitted into or remaining in the school or college, to attend or abstain from attending any Sunday school, place of religious worship, religious observance, or instruction in religious subjects in the school or college or elsewhere. The times for religious worship or for any lesson on a religious subject shall be conveniently arranged for the purpose of allowing the withdrawal of any scholar therefrom (2 Edw. 7, c. 42, sec. 4).

INSPECTION OF SECONDARY SCHOOLS.

The Board of Education, by their officers, or, after taking the advice of the consultative committee referred to on p. 3, by any university or other organization, may inspect any school supplying secondary education, and desirous to be so inspected, for the purpose of ascertaining the character of the teaching in the school and the nature of the provisions made for the teaching and health of the scholars. The inspection of any such school is to be on terms fixed by the Board of Education, with the consent of the Treasury. The council of any county or county borough may, out of any money applicable for the purposes of higher education, pay or contribute to the expenses of any such inspection of a school supplying secondary education within their county or borough (62 & 63 Vict., c. 33, sec. 3).

ELEMENTARY EDUCATION.

POWERS AND DUTIES OF LOCAL EDUCATION
AUTHORITIES.

The local education authorities for purposes of elementary education—*i.e.* the council of every county and county borough, and the councils of non-county boroughs with a population exceeding 10,000, and of urban districts with a population exceeding 20,000 (according to the census of 1901), subject to the power of the last-mentioned councils to relinquish their powers and duties as a local education authority in favour of the council of the county, have throughout their area the powers and duties of a school board and school attendance committee under the Elementary Education Acts, and are responsible for and have the control of all secular instruction in public elementary schools not provided by them (2 Edw. 7, c. 42, secs. 5 and 20 (*b*)).

School boards and school attendance committees are abolished. As to the transfer of property and officers and adjustments in consequence of the substitution of local education authorities for school boards and school attendance committees, see pp. 77-80.

As to schemes for the establishment of education committees and the delegation to such committees of powers of the local education authority, see pp. 5, 6.

Appointment of Officers by Local Education Authority.

The local education authority may appoint necessary officers, including the teachers required for any school provided by them, to hold office during the pleasure of the authority, and may assign to them such salaries or remuneration as they think fit, and may from time to time remove any of such officers (33 & 34 Vict., c. 75, sec. 35).

The local education authority may appoint an officer to enforce bye-laws as to attendance of children at school, and to take the proceedings necessary for obtaining orders for the sending of children to industrial schools (sec. 36).

Two or more local education authorities may arrange for the same person to be an officer to both or all such authorities.

The officers are to perform such duties as may be assigned to them by the authority or authorities who appoint them (sec. 35).

The provisions of the School Sites Acts with regard to the tenure of office of a schoolmaster or schoolmistress, and the recovery of possession of premises held over by a teacher who has been dismissed or has ceased to hold office, apply in the case of a school provided by the local education authority (sec. 86).

As to teachers in public elementary schools not provided by a local education authority, see pp. 29-31.

PROVISION BY LOCAL EDUCATION AUTHORITY OF PUBLIC SCHOOL ACCOMMODATION.

Definition of Public School Accommodation and Public Elementary Schools.

Public school accommodation is accommodation in public elementary schools available for all the children resident in the area of the local education authority for whose elementary education efficient and suitable provision is not otherwise made (33 & 34 Vict., c. 75, sec. 5).

The duty of a local education authority to provide public school accommodation includes the duty to provide a sufficient amount of public school accommodation without payment of fees in every part of their area (2 Edw. 7, c. 42, Third Schedule (5)).

An "elementary school" is a school or department of a school at which elementary education is the principal

part of the education there given. It does not, however, include any school carried on as an evening school under the regulations of the Board of Education, or any school or department of a school at which the ordinary payments in respect of the instruction, from each scholar, exceed ninepence a week (33 & 34 Vict., c. 75, sec. 3; 2 Edw. 7, c. 42, sec. 22 (1)).

An elementary school conducted in accordance with certain regulations is to be deemed a "public elementary school." The regulations referred to are to the following effect :—

1. It is not to be required as a condition of the admission or continuance of any child in the school—

- (1) That he shall attend or abstain from attending any Sunday school or any place of religious worship; or
- (2) That he shall, if withdrawn by his parent, attend any religious observance, or any instruction in religious subjects in the school or elsewhere; or
- (3) That he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which the parent belongs.

2. The religious observance or instruction in religious subjects in the school is only to take place at the beginning or at the end, or both at the beginning and end of a meeting of the school. The times for the religious observance or instruction are to be inserted in a time-table to be approved by the Board of Education, and to be kept permanently and conspicuously affixed in every school-room.

No child withdrawn by his parent from any religious observance or instruction is to forfeit any of the other benefits of the school.

3. The school is to be open at all times to the inspection of any of His Majesty's Inspectors of Schools; but it is to be no part of the duties of the inspector to inquire into any instruction in religious subjects given at the school, or

to examine any scholar in religious knowledge or in any religious subject or book.

4. The school is to be conducted in accordance with the conditions which are required to be fulfilled by an elementary school in order to obtain an annual Parliamentary Grant (33 & 34 Vict., c. 75, sec. 7).

The power to provide instruction under the Elementary Education Acts, except where expressly provided to the contrary, is to be limited to the provision in a public elementary school of instruction given under the regulations of the Board of Education to scholars who, at the close of the school year, will not be more than sixteen years of age. The local education authority may, however, with the consent of the Board of Education, extend those limits if no suitable higher education is available within a reasonable distance of the school (2 Edw. 7, c. 42, sec. 22 (2)).

The powers of a council as the local education authority include the provision of vehicles or the payment of reasonable travelling expenses for teachers or children attending school whenever the council consider such provision or payment required by the circumstances of their area or of any part of it (sec. 23 (1)).

Schools to be treated as provided by Local Education Authorities.

The property of every school board is transferred to the local education authority exercising the powers of the school board, and all schools which have been provided by a school board, as well as schools which the local education authority may themselves provide, are, for the purposes of the Education Act, 1902, to be treated as provided by the local education authority.

A school which was transferred to a school board by the managers of the school under sec. 23 of the Elementary Education Act, 1870, which conferred powers similar to those referred to on p. 23 as to transfer of schools to local

education authorities, was, to the extent and during such time as the school board had any control over the school, to be deemed to be provided by the school board. Any school which is deemed to have been so provided is also to be treated as a school which is deemed to have been provided by the local education authority (2 Edw. 7, c. 42, Second Schedule (13)).

A school connected with an endowment, charity, or trust of which the school board were constituted the trustees (36 & 37 Vict., c. 86, sec. 13) is also to be deemed to be a school provided by the local education authority.

Provision by Local Education Authority of Public School Accommodation.

It is the duty of the local education authority from time to time to provide such additional accommodation as is in the opinion of the Board of Education necessary in order to supply a sufficient amount of public school accommodation for their district, and they may provide such accommodation by building or otherwise schoolhouses properly fitted up, and improve, enlarge, and fit up any schoolhouse provided by them (33 & 34 Vict., c. 75, secs. 18 and 19; 2 Edw. 7, c. 42, Third Schedule (6)).

Provision of New Schools.

Where, however, the local education authority propose to provide a new public elementary school, they are to give public notice of their intention to do so, and the managers of any existing school, or any ten rate-payers in the area for which it is proposed to provide the school, may, within three months after the notice is given, appeal to the Board of Education on the ground that the proposed school is not required, or that a school provided by the local education authority, or not so provided, as the case may be, is better suited to meet the wants of the district than the school proposed to be provided, and any school built in contravention of the decision

of the Board of Education on such appeal is to be treated as unnecessary.

If, in the opinion of the Board of Education, any enlargement of a public elementary school is such as to amount to the provision of a new school, the foregoing provision is to apply.

In case of dispute, the Board of Education are, without unnecessary delay, to determine whether a school is necessary or not, and, in so determining, and also in deciding on any appeal as to the provision of a new school, are to have regard to the interest of secular instruction, to the wishes of parents as to the education of their children, and to the economy of the rates. A school which is for the time being recognized as a public elementary school is not, however, to be considered unnecessary if the number of scholars in average attendance at the school, as computed by the Board of Education, is not less than thirty (2 Edw. 7, c. 42, secs. 8 and 9).

Similar provisions apply when persons other than the local education authority propose to provide a new public elementary school, and in that case the local education authority or any ten ratepayers may appeal.

*School Accommodation for Blind, Deaf, Defective,
and Epileptic Children.*

As to the provision of school accommodation for blind and deaf children, and defective and epileptic children, see pp. 44, 47.

*Maintenance of Schools provided by Local Education
Authority.*

• The local education authority are to maintain and keep efficient every school provided by them within their area which is necessary, and have control of all expenditure required for that purpose. They are to supply school apparatus and everything necessary for the efficiency of the schools so provided (33 & 34 Vict., c. 75, secs. 18 and 19; 2 Edw. 7, c. 42, sec. 7).

Combination of Local Education Authorities.

The local education authorities of two or more districts may, with the sanction of the Board of Education, combine together for the purpose of providing, maintaining, and keeping efficient schools common to those districts. Such agreements may provide for the appointment of a joint body of managers and for the proportion of the contributions to be paid by each district, and any other matters which, in the opinion of the Board of Education, are necessary for carrying out the agreement, and the expenses of the joint body of managers are to be paid in the proportions specified in the agreement by each of the local authorities (33 & 34 Vict., c. 75, sec. 52).

The scheme for the establishment of an education committee may also provide for a joint education committee for any area formed by a combination of counties, boroughs, or urban districts (see p. 7).

Default of Local Education Authority in providing Necessary Public School Accommodation.

If the local education authority fail to provide such additional public school accommodation as is in the opinion of the Board of Education necessary in any part of their area, the Board of Education, after a public inquiry, may make such order as they think necessary or proper for the purpose of compelling the authority to fulfil their duty, and any such order may be enforced by *mandamus* (2 Edw. 7, c. 42, sec. 16).

ACQUISITION OF LAND AS SITES OF SCHOOLHOUSES.

The local education authority may, for providing school accommodation, purchase or take on lease any land and right over land. For the purchase of land, whether by agreement or otherwise than by agreement, the clauses of the Lands Clauses Consolidation Act, 1845, and the amending Acts, with the exception of those

relating to "access to the special Act," are incorporated with the Elementary Education Acts. The powers conferred on the local education authority of purchasing land compulsorily are, however, only to be exercised subject to certain prescribed conditions, and under the authority of a provisional order of the Board of Education, which must be confirmed by Parliament (33 & 34 Vict., c. 75, sec. 20 ; 36 & 37 Vict., c. 86, sec. 15).

The School Sites Acts of 1841, 1844, 1849, and 1851 also apply to the local education authority in the same manner as if they were trustees or managers of a school within the meaning of those Acts (33 & 34 Vict., c. 75, sec. 20).

Transfer of Schools by Managers to Local Education Authority.

Arrangements may be made, subject to certain conditions, for the transfer of an elementary school by the managers of the school to the local education authority of the area in which the school is situated. In no case, however, is such an arrangement to be made without the consent of the Board of Education and (if there are annual subscribers to the school) the consent of two-thirds of the subscribers present and voting on the question at a meeting summoned for the purpose. The arrangement may provide for the absolute conveyance to the local education authority of all the interest in the schoolhouse possessed by the managers or trustees of the school, or for the lease of the schoolhouse at a nominal rent or otherwise to the local education authority, or for the use of the schoolhouse by the authority during part of the week only. The arrangement may also provide for the transfer of any endowment belonging to the school, or for the discharge by the local education authority of any debt charged on the school not exceeding the value of the interest or endowment transferred to them. A school so transferred is to be deemed a school provided by the local education authority (33 & 34 Vict., c. 75, sec. 23). Any

such transfer is for the purposes of sec. 8 of 2 Edw. 7, c. 42 (p. 20), to be treated as the provision of a new school. As to re-transfers of schools, see p. 28.

MANAGEMENT OF PUBLIC ELEMENTARY SCHOOLS PROVIDED BY LOCAL EDUCATION AUTHORITIES.

Management of Schools of Local Education Authority.

The local education authority throughout their area have the powers which were vested in a school board. They are to maintain and keep efficient all public elementary schools provided by them within their area which are necessary, and have the control of all expenditure required for that purpose (2 Edw. 7, c. 42, sec. 7).

All public elementary schools provided by the local education authority, where the local education authority are the council of a county, are to have a body of managers.

Where the local education authority are the council of a borough or urban district, they may, if they think fit, appoint for any school provided by them a body of managers consisting of such number of managers as they may determine (sec. 6 (1)).

The managers of a school provided by the local education authority are to deal with such matters relating to the management of the school and subject to such conditions and restrictions as the local education authority determine (First Schedule B (4)).

Managers of Schools provided by Local Education Authority.

Where the local education authority are the council of a county, the body of managers is to consist of a number of managers not exceeding four appointed by the council, together with a number not exceeding two appointed by the minor local authority (2 Edw. 7, c. 42, sec. 6 (1)).

A woman is not disqualified by sex or marriage from being on a body of managers (sec. 23 (6)).

The expression "minor local authority" means, as respects any school, the council of any borough or urban district, or the parish council or (where there is no parish council) the parish meeting of any parish which appears to the county council to be served by the school: Where the school appears to the county council to serve the area of more than one minor local authority, the county council are to make such provision as they think proper for joint appointment of managers by the authorities concerned (sec. 24).

Where the local education authority consider that the circumstances of any school require a larger body of managers than that specified above, they may increase the total number of managers, so, however, that the number of each class of managers is proportionately increased (sec. 6 (3)).

The local education authority, whether the council of a county or borough or urban district, may group under one body of managers any public elementary schools provided by them. The body of managers of grouped schools are to consist of such number and be appointed in such manner and proportion as the local education authority may determine. Where the local education authority are the council of a county, they are to make provision for the due representation of minor local authorities on the bodies of managers of schools grouped under their direction (sec. 12).

With regard to a body of managers in the case of a school not provided by a local education authority, see P. 33.

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Meetings, Proceedings, &c., of Managers of Schools.

A body of managers may choose their chairman, except in cases where there is an ex-officio chairman, and regulate their quorum and proceedings in such manner as they think fit, subject, in the case of the managers of a school provided by the local education authority, to any directions of

that authority. The quorum, however, is not to be less than three, or one-third of the whole number of managers, whichever is the greater.

Every question at a meeting of managers is to be determined by a majority of the votes of the managers present and voting on the question, and in case of an equal division of votes the chairman of the meeting has a second or casting vote.

The proceedings of managers are not to be invalidated by any vacancy in their number, or by any defect in the election, appointment, or qualification of any manager.

The managers of a school provided by the local education authority are to deal with such matters relating to the management of the school, and subject to such conditions and restrictions, as the local education authority determine.

A manager of a school not provided by the local education authority, appointed by that authority or by the minor local authority, is removable by the authority by whom he is appointed, and any such manager may resign his office.

The managers are to hold a meeting at least once in every three months.

Any two managers may convene a meeting of the managers.

The minutes of the proceedings of the managers are to be kept in a book provided for that purpose.

A minute of the proceedings of a body of managers, signed at the same or the next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, is to be received in evidence without further proof.

The minutes of managers are to be open to inspection by the local education authority.

Until the contrary is proved, a body of managers are to be deemed to be duly constituted and to have power to deal with the matters referred to in their minutes (2 Edw. 7, c. 42, First Schedule B).

Religious Instruction in Schools provided by Local Education Authorities.

The conditions with regard to religious instruction and observances which must be fulfilled in order that an elementary school may be a public elementary school have been already referred to (see p. 18). When a school is provided by a local education authority, not only must these conditions be strictly complied with, but no religious catechism or religious formulary distinctive of any particular denomination is to be taught in the school (33 & 34 Vict., c. 75, sec. 14).

The local education authority are to report to the Board of Education any infraction of the provisions of sec. 7 of the last-mentioned Act (see p. 18), in any public elementary school within the district which may come to their knowledge, and to forward to the Board any complaint which they may receive of the infraction of those provisions (39 & 40 Vict., c. 79, sec. 7).

As to religious instruction and observances in public elementary schools not provided by the local education authority, see p. 31.

Discontinuance of Schools.

The local education authority may, with the sanction of the Board of Education, discontinue any school provided by them which is deemed to be unnecessary, or, with the like sanction, change the site of any school which they have provided (33 & 34 Vict., c. 75, sec. 18).

The provisions of the Charitable Trusts Acts, 1853 to 1869, extend to the sale, leasing, and exchange of any land or schoolhouse belonging to a local education authority which is not required by them, the Board of Education, for the purpose of the provisions in those Acts, being substituted for the Charity Commissioners (33 & 34 Vict., c. 75, sec. 22).

Where it is deemed desirable that a school which has

been transferred by the managers of the school to a school board, under the provisions of sec. 23 of the 33 & 34 Vict., c. 75 (see p. 23), should be re-transferred to the managers, an arrangement may be made for that purpose, subject to certain conditions. The consent of the Board of Education to the re-transfer is requisite, and that consent is not to be given unless the Board of Education are satisfied that any money expended on the school out of a loan raised by the school board or the local education authority has been or will, on the completion of the re-transfer, be repaid (33 & 34 Vict., c. 75, sec. 24).

When any such re-transfer is proposed to be made to the local education authority, the conditions which apply in the case of a proposal to provide a new public elementary school (see p. 20) as regards notice, objections, and decision of the Board of Education must be fulfilled.

Fees of Children in Schools provided by Local Education Authority.

The Elementary Education Act, 1891, contains provisions which preclude, subject to certain exceptions, the charge of fees in the case of children over three and under fifteen years of age attending public elementary schools, where the fee grant is paid. These provisions are referred to on p. 65.

The other provisions with respect to the fees of children for school attendance at schools provided by the local education authority are to the following effect:—

The fees to be paid by the children attending a school so provided are to be such as the local education authority, with the consent of the Board of Education, prescribe (33 & 34 Vict., c. 75, sec. 17); but nothing in the section referred to is to prevent the authority from admitting scholars to any school provided by them without requiring any fee (54 & 55 Vict., c. 56, sec. 8).

The local education authority may, in the case of any

child whose parent is unable from poverty to pay the school fees, from time to time, for a renewable period not exceeding six months, remit the whole or any part of the fee payable for attendance at a school provided by the authority. But the remission of school fees is not to be deemed parochial relief to the parent of the child (33 & 34 Vict., c. 75, sec. 17). A person fraudulently obtaining remission of fees is liable to fourteen days' imprisonment (39 & 40 Vict., c. 79, sec. 37).

As to school fees in the case of a public elementary school not provided by a local education authority, see p. 36.

POWERS, &C., OF LOCAL EDUCATION AUTHORITIES AS TO SCHOOLS NOT PROVIDED BY THEM.

Maintenance of Schools not provided by Local Education Authority.

It is the duty of the local education authority, so long as certain conditions and provisions are complied with, to maintain and keep efficient all public elementary schools within their area not provided by them which are necessary, and the authority are to have the control of all expenditure required for that purpose, other than expenditure for which, under the Act, provision is to be made by the managers, and are also to have the control of all secular instruction in those schools. The conditions and provisions referred to are as follows:—

- (1) The managers of the school shall carry out any directions of the local education authority as to the secular instruction to be given in the school, including any directions with respect to the number and educational qualifications of the teachers to be employed for such instruction and for the dismissal of any teacher on educational grounds, and if the managers fail to carry out any such direction the local education authority shall, in addition to their

other powers, have the power themselves to carry out the direction in question as if they were the managers ; but no direction given under this provision shall be such as to interfere with reasonable facilities for religious instruction during school hours ;

- (2) The local education authority shall have power to inspect the school ;
- (3) The consent of the local education authority shall be required to the appointment of teachers, but that consent shall not be withheld except on educational grounds ; and the consent of the authority shall also be required to the dismissal of a teacher unless the dismissal be on grounds connected with the giving of religious instruction in the school ;
- (4) The managers of the school shall provide the school-house free of any charge, except for the teacher's dwelling-house (if any), to the local education authority for use as a public elementary school, and shall, out of funds provided by them, keep the schoolhouse in good repair, and make such alterations and improvements in the buildings as may be reasonably required by the local education authority ; but such damage as the local education authority consider to be due to fair wear and tear in the use of any room in the schoolhouse for the purpose of a public elementary school shall be made good by them.
- (5) The managers of the school shall, if the local education authority have no suitable accommodation in schools provided by them, allow that authority to use any room in the schoolhouse out of school hours free of charge for any educational purpose, but this obligation shall not extend to more than three days in the week (2 Edw. 7, c. 42, sec. 7 (1)).

The managers of a school maintained but not provided by the local education authority, in respect of the use by them of the school furniture out of school hours, and the local education authority in respect of the use by them of any room in the schoolhouse out of school hours,

will be liable to make good any damage caused to the furniture or the room, as the case may be, by reason of that use (other than damage arising from fair wear and tear), and the managers are to take care that, after the use of a room in the schoolhouse by them, the room is left in a proper condition for school purposes (sec. 7 (2)).

The local education authority are entitled to use for the purposes of the school any furniture and apparatus belonging to the trustees or managers of any public elementary school not provided by a school board and in use for the purposes of the school before the appointed day (Second Schedule (14)).

Assistant Teachers and Pupil Teachers.

In public elementary schools maintained but not provided by the local education authority, assistant teachers and pupil teachers may be appointed, if it is thought fit, without reference to religious creed and denomination, and, in any case in which there are more candidates for the post of pupil teacher than there are places to be filled, the appointment is to be made by the local education authority, and they are to determine the respective qualifications of the candidates by examination or otherwise (sec. 7 (5)).

As to the appointment and dismissal of teachers in schools not provided by the local education authority, see also pp. 29, 30.

Religious Instruction in School.

In order that an elementary school may be a public elementary school, it is necessary that the provisions of sec. 7 of the Elementary Education Act, 1870, as to religious instruction and observances should be strictly complied with (see p. 18). Further, the religious instruction given in a public elementary school not provided by the local education authority, as regards its character, is to be in accordance with the provisions (if any) of the trust

deed, and to be under the control of the managers ; but this is not to affect any provision in a trust deed for reference to the bishop or superior ecclesiastical or other denominational authority, so far as such provision gives to the bishop or authority the power of deciding whether the character of the religious instruction is or is not in accordance with the trust deed (sec. 7 (6)).

In the case of any such school, the managers, if they desire to have the school inspected and the children examined in respect of religious and other subjects by an inspector other than one of His Majesty's Inspectors, may fix a day or days not exceeding two in any one year, for the inspection or examination ; but public notice must be given in the school, and a notice in writing must be conspicuously affixed in the school of the day so fixed, not less than fourteen days before the inspection or examination. On any such day any religious observance or instruction in religious subjects may take place at any time during the school meeting, but no child who has been withdrawn by his parent from any religious observance or instruction is to be required to attend the school on that day (33 & 34 Vict., c. 75, sec. 67).

As to the duty of the local education authority to report to the Board of Education infractions of the provisions of sec. 7 of the Elementary Education Act, 1876, see p. 27.

Decision of Board of Education in Case of Dispute.

If any question arises under sec. 7 of the Education Act, 1902 (see pp. 29–32), between the local education authority and the managers of a school not provided by the authority, the question is to be determined by the Board of Education (2 Edw. 7, c. 42, sec. 7 (3)).

Condition of Parliamentary Grant.

One of the conditions required to be fulfilled by an elementary school in order to obtain a parliamentary grant

is that the school is maintained under and complies with the provisions of sec. 7 of the Education Act, 1902 (see pp. 29-32) (sec. 7 (4)).

MANAGEMENT OF SCHOOLS NOT PROVIDED BY LOCAL EDUCATION AUTHORITY.

Managers of Schools.

All public elementary schools not provided by the local education authority are to have, in place of the existing managers, a body of managers consisting of a number of foundation managers not exceeding four appointed under the provisions of the trust deed of the school, together with a number of managers not exceeding two appointed (*a*) where the local education authority are the council of a county, one by that council and one by the minor local authority ; and (*b*) where the local education authority are the council of a borough or urban district, both by that authority (2 Edw. 7, c. 42, secs. 6 (2), 11 (1)).

As to orders of the Board of Education for meeting cases where the provisions of the trust deed as to the appointment of managers are inconsistent with the provisions of the Education Act, 1902, or insufficient or inapplicable for the purpose, or there is no such trust deed available, see p. 34. The expression "trust deed" includes any instrument regulating the trusts of a school (sec. 24 (5)).

For definition of the term "minor local authority," see p. 25.

Where the local education authority consider that the circumstances of any school require a larger body of managers than that specified above, they may increase the total number of managers, so, however, that the number of each class of managers is proportionately increased (sec. 6 (3)).

The local education authority, with the consent of the

managers of the schools, may group under one body or managers any public elementary schools not provided by them. The body of managers of schools so grouped are to consist of such number and to be appointed in such manner and proportion as may be agreed upon between the bodies of managers of the schools concerned and the local education authority, or in default of agreement may be determined by the Board of Education. Any arrangement for thus grouping schools will, unless previously determined by consent of the parties concerned, remain in force for a period of three years (sec. 12).

*Trust Deeds as to Appointment of Managers of Schools
not provided by Local Education Authority.*

If it is shown to the satisfaction of the Board of Education that the provisions of the trust deed of a school as to the appointment of managers are in any respect inconsistent with the provisions of the Education Act, 1902, or insufficient or inapplicable, or that there is no such trust deed available, the Board of Education are to make an order for the purpose of meeting the case (sec. 11 (1)).

An order for this purpose may be made on the application of the existing owners, trustees, or managers of the school, if made within a period of three months after the 18th December, 1902, and after that period on the application of the local education authority or any other person interested in the management of the school. Any such order, where it modifies the trust deed, will have effect as part of the trust deed, and where there is no trust deed will have effect as if it were contained in a trust deed.

Notice of any such application, together with a copy of the draft final order proposed to be made thereon, is to be given by the Board of Education to the local education authority and the existing owners, trustees, and managers, and any other persons who appear to the Board of Education to be interested, and the final order is not to be made until six weeks after notice has been so given.

In making an order under this section with regard to

any school, the Board of Education are to have regard to the ownership of the school building, and to the principles on which the education given in the school has been conducted in the past.

The Board of Education may, if they think that the circumstances of the case require it, make any interim order on any application under this section to have temporary effect until the final order is made (sec. 11 (2), (3), (4), and (5)).

The Board of Education may, on the application of the managers of the school, the local education authority, or any person appearing to them to be interested in the school, revoke, vary, or amend any order made under the foregoing provisions by an order made in a similar manner ; but before making any such order the draft is, as soon as may be, to be laid before each House of Parliament, and, if within thirty days, being days on which Parliament has sat, after the draft has been so laid before Parliament, either House resolves that the draft, or any part thereof, should not be proceeded with, no further proceedings are to be taken thereon, without prejudice to the making of any new draft order (sec. 11 (8)).

POWERS OF MANAGERS OF SCHOOLS NOT PROVIDED BY LOCAL EDUCATION AUTHORITY.

Powers of Management.

The body of managers appointed for a public elementary school not provided by the local education authority are the managers of that school for the purposes of the Elementary Education Acts and the Education Act, 1902, and, so far as respects the management of the school as a public elementary school, for the purpose of the trust deed (2 Edw. 7, c. 42, sec. 11 (6)).

The managers of a school maintained but not provided by the local education authority have all powers of management required for the purpose of carrying out the Act, and

(subject to the powers of the local education authority referred to on pp. 29-31) have the exclusive power of appointing and dismissing teachers (sec. 7 (7)).

*Meetings, &c., of Managers of Schools not provided
by Local Education Authority.*

For provisions as to the convening and holding of meetings of the managers, the quorum, the chairman, the voting and proceedings at the meetings and the minutes of the proceedings, see p. 25.

Fees in Schools not provided by Local Education Authority.

For limitation of fees in public elementary schools, see definition of "elementary school," p. 17.

The Elementary Education Act, 1891, contains provisions which preclude, subject to certain exceptions, the charge of fees in the case of children over three and under fifteen years of age attending public elementary schools when the fee grant is paid (see p. 65).

Apportionment of School Fees.

Where before the 18th December, 1902, fees have been charged in any public elementary school not provided by the local education authority, that authority shall, while they continue to allow fees to be charged in respect of the school, pay such proportion of those fees as may be agreed upon, or, in default of agreement, determined by the Board of Education, to the managers (2 Edw. 7, c. 42, sec. 14).

*Purchase of Land, &c., by Managers of Public Elementary
Schools.*

For the purpose of the purchase by the managers of a public elementary school not provided by the local

education authority, of a school-house or site of a school-house, the provisions of the Lands Clauses Consolidation Acts, with the exception of those relating to the purchase of land otherwise than by agreement, apply. The conveyance of any land so purchased may be in the form prescribed by any of the School Sites Acts, with the modification that the conveyance shall express that the land is to be held upon trust for the purposes of a public elementary school, or some one of such purposes as may be specified, and for no other purpose whatever. Land may be acquired by managers either under the Lands Clauses Consolidation Acts or under the School Sites Acts. Any persons desirous of establishing a public elementary school are to have the like powers if they obtain the approval of the Board of Education to the establishment of the school (33 & 34 Vict., c. 75, sec. 21).

As to the provisions which apply to managers in the case of a proposal by the local education authority or other persons to provide a new public elementary school, or to make any enlargement of a public elementary school, which in the opinion of the Board of Education is such as to amount to the provision of a new school, see p. 20.

*Powers of Managers as to Trust Deeds, Transfer or
Re-transfer of Schools.*

As to the powers of managers with regard to alterations of trust deeds with respect to the appointment of managers, see p. 34.

For the powers of managers as to the transfer of schools to the local education authority and the re-transfer of such schools, see pp. 23, 28.

Duty of Managers as to Returns.

In a district where bye-laws are in force, the local education authority may supply forms to any public elementary school for obtaining reasonable information as to the attendance at the school of children residing

in the district. If the managers fail to cause the forms to be duly filled up and returned, or such information to be supplied as will enable the local education authority to ascertain whether a child attending the school attends as required by the bye-laws, the managers are to cause to be produced to the officer of the authority or other person duly authorized by them for the purpose, at any reasonable time, the registers and other books as to the attendance of children at the school, and permit him to make copies or extracts. If a difference arises between the local education authority and the managers as to whether or not the information required by the forms is reasonable, the question is to be referred to the Board of Education, and their decision is to be final (36 & 37 Vict., c. 86, sec. 22).

See also p. 41 as to duty with regard to returns as to public elementary schools and children requiring elementary education.

Exemption from Rates of Public Elementary Schools not provided by Local Education Authority.

No person is to be assessed or rated to any local rate in respect of any land or buildings used exclusively or mainly for the purposes of the school-rooms, offices, or playground of a public elementary school not provided by the local education authority, except to the extent of any profit derived by the managers of the school from the letting thereof (60 Vict., c. 5, sec. 3).

MAINTENANCE BY LOCAL EDUCATION AUTHORITY OF
SCHOOLS ATTACHED TO INSTITUTIONS.

The local education authority may maintain as a public elementary school under the Education Act, 1902, but are not required so to maintain, any Marine school, or any school which is part of, or is held in the premises of, any institution in which children are boarded, but their refusal to maintain such a school will not render the school incapable

of receiving a parliamentary grant, nor shall the school, if not so maintained, be subject to the provisions of the Act as to the appointment of managers, or as to control by the local education authority (2 Edw. 7, c. 42, sec. 15).

EDUCATIONAL ENDOWMENTS, &C.

Gifts for Educational Purposes, and Schemes as to Schools and Educational Endowments.

A local education authority may be constituted trustees for any educational endowment or charity for purposes connected with education, and may accept any real or personal property given to them as an educational endowment, or upon trust for educational purposes, subject to the following conditions:—

(1.) That the local education authority shall not be trustees for or accept any educational endowment, charity, or trust, the purposes of which are inconsistent with the principles on which they are required to conduct schools provided by them (see p. 27).

(2.) That every school connected with the endowment, charity, or trust shall be deemed to be a school provided by the local education authority, except that the authority are not under this enactment to expend any money out of the local rate for any purpose other than elementary education (36 & 37 Vict., c. 86, sec. 13).

The Mortmain and Charitable Uses Act, 1888, and so much of the Mortmain and Charitable Uses Act, 1891, as requires that land assured by will shall be sold within one year from the death of the testator, shall not apply to any assurance, within the meaning of the Act of 1888, of land for the purpose of a schoolhouse for an elementary school (2 Edw. 7, c. 42, sec. 23 (5)).

The Board of Education are empowered to approve of schemes with respect to schools or endowments which were excepted from the Endowed Schools Act, 1869, on the ground that the school was, at the commencement of that

Act, in receipt of an annual parliamentary grant (33 & 34 Vict., c. 75, sec. 75).

An Order in Council may transfer to the Board of Education and make exerciseable by them any of the powers of the Charity Commissioners or of the Board of Agriculture in matters relating to education (62 & 63 Vict., c. 33, sec. 2).

Where under the trusts affecting any endowment the income must be applied in whole or in part for those purposes of a public elementary school for which provision is to be made by the local education authority, the whole of the income or the part thereof is to be paid to that authority, and, in case part only of the income must be so applied and there is no provision under the trusts for determining the amount which represents that part, that amount is to be determined, in case of difference between the parties concerned, by the Board of Education; but if a public inquiry is demanded by the local education authority, the decision of the Board of Education is not to be given until after such an inquiry, of which ten days' previous notice is to be given to the local education authority and to the minor local authority and to the trustees, has been held by the Board of Education at the cost of the local education authority.

Any money arising from an endowment, and paid to a county council for those purposes of a public elementary school for which provision is to be made by the council, is to be credited by the council in aid of the rate levied in the parish or parishes which in the opinion of the council are served by the school for the purposes of which the sum is paid, or, if the council so direct, is to be paid to the overseers of the parish or parishes in the proportions directed by the council, and applied by the overseers in aid of the poor rate levied in the parish (2 Edw. 7, c. 42, sec. 13).

Where the receipt by a school, or the trustees or managers of a school, of any endowment or other benefit was, on the 18th December, 1902, dependent on any

qualification of the managers, the qualification of the foundation managers only, in case of question, is to be regarded (sec. 11 (7)).

RETURNS AND REPORTS BY LOCAL EDUCATION AUTHORITY.

Every local education authority, whenever required by the Board of Education, but not oftener than once in every year, are to send to the Board a return containing such particulars with respect to the elementary schools and children requiring elementary education in their district as the Board may from time to time require (33 & 34 Vict., c. 75, secs. 67, 69).

For the purpose of obtaining these returns the Board of Education are to supply the local education authority with the forms required, and the managers or principal teacher of every school required to be included in the return are to fill up the forms and send the same to the local education authority within the time specified in the form.

The local education authority with the sanction of the Board of Education may employ persons to assist in making the returns and pay them for their services such remuneration as the Treasury may approve. That remuneration, together with any other expenses connected with the preparation of the returns which may be sanctioned by the Treasury, is to be paid by the Board of Education. In the event of the local education authority failing to make the required returns, the Board of Education may appoint persons for the purpose. They may also appoint inspectors to inquire into the accuracy and completeness of returns and into the efficiency and suitability of schools included in or improperly omitted from returns. The inspectors may also examine the scholars in the school. If the Board of Education think it desirable they may themselves, in any case where they are empowered to require the local education authority to furnish a return, appoint a

person to make such return without requiring a return from the authority (33 & 34 Vict., c. 75, secs. 68, 69, 70, 71; 36 & 37 Vict., c. 86, sec. 19). If in the case of any school the managers or teachers refuse or neglect to fill up the form required for a return by the local education authority, or refuse to allow the inspector appointed by the Board of Education to inspect the school-house or examine any scholar or the school books and registers, the school is not to be taken into consideration among the schools giving efficient elementary education in the district (33 & 34 Vict., c. 75, sec. 72).

The local education authorities are further required to make such reports and returns and give such information to the Board of Education as they may from time to time require (33 & 34 Vict., c. 75, sec. 95).

CERTIFIED INDUSTRIAL SCHOOLS.

The local education authority may, if they deem it desirable, with the consent of one of His Majesty's Secretaries of State, establish, build, and maintain a certified industrial school under the Industrial Schools Act, 1866, or a certified day industrial school under the Elementary Education Act, 1876 (33 & 34 Vict., c. 75, sec. 28; 39 & 40 Vict., c. 79, secs. 15 and 16).

"Day industrial schools" are schools in which industrial training, elementary education, and one or more meals a day, but not lodging, will be provided for the children. A school for this purpose, when certified by a Secretary of State, becomes a "certified day industrial school."

Certain powers are also conferred upon a local education authority of contributing towards the alteration, enlargement, or rebuilding of a certified industrial school or certified day industrial school, or towards the support of the inmates of such a school, or towards the management of such a school, or towards the establishment or building of a school intended to be a certified industrial

school, or towards the purchase of land required either for the use of an existing certified industrial school, or for the site of a school intended to be a certified industrial school (33 & 34 Vict., c. 75, sec. 27 ; 36 & 37 Vict., c. 86, sec. 14 ; 39 & 40 Vict., c. 79, sec. 16). The local education authority may also in respect of industrial schools, subject to certain conditions, undertake anything to which they are authorized to contribute (42 & 43 Vict., c. 48, sec. 2).

The local education authority may, if they think fit, appoint an officer to bring children who are liable to be sent to a certified industrial school before justices, with the view to their being so sent (33 & 34 Vict., c. 75, sec. 36).

When the local education authority are informed by any person of a child within their jurisdiction liable to be sent to an industrial school, it will be their duty to take proceedings for that purpose, unless they think it inexpedient to do so (39 & 40 Vict., c. 79, sec. 13). But a child who under the Industrial Schools Acts might be sent to a certified industrial school may, if the court deem it desirable, be sent to a certified day industrial school. Children sent to a certified day industrial school may be detained there during such hours as may be authorized by the rules of the school approved by the Secretary of State (sec. 16).

When a court of summary jurisdiction orders, otherwise than by an attendance order, a child to be sent to a certified day industrial school, the parent of the child, if liable to maintain him, may be ordered to contribute a sum not exceeding two shillings per week. It will be the duty of the local education authority to obtain and enforce the order, and any sums received under it are to be applied in aid of their expenses. If the parent is unable to pay the sum required by the order, he is to apply to the guardians having jurisdiction in the parish in which he resides, and the guardians, if satisfied of his inability, are to give him sufficient relief to pay the sum, or such part as they may consider him unable to pay.

If a local education authority and the parent of a child so request, and the parent undertakes to pay such sum,

not less than one shilling a week, as a Secretary of State may fix, the managers of a certified day industrial school may receive the child into the school under an attendance order, or without an order of a court. In such case a sum not exceeding sixpence a week may be contributed out of moneys provided by Parliament (39 & 40 Vict., c. 79, sec. 16).

When a child is sent to a certified industrial school upon the complaint of a local education authority, a licence may be given by the managers at the expiration of one month after the child is received by them for the child to live out of the school, on the condition that he attends as a day scholar some certified efficient school in such regular manner as is specified in the licence (39 & 40 Vict., c. 79, sec. 14).

Where a child is committed to a certified industrial school at the instance of a local education authority, the authority may pay the expenses of and incidental to the conveyance of the child to and from the school, and the sending of the child out on licence or bringing back the child on the expiration or revocation of a licence. A local education authority which has contributed to the support of a child in an industrial school may also contribute to the ultimate disposal of the child (63 & 64 Vict., c. 53, sec. 4).

EDUCATION OF BLIND AND DEAF CHILDREN AND DEFECTIVE AND EPILEPTIC CHILDREN.

Blind and Deaf Children.

The 56 & 57 Vict., c. 42, imposes on the parents of blind or deaf children the duty of causing such children to receive efficient elementary instruction suitable to them.

For the purposes of the Act a "blind child" means a child too blind to be able to read the ordinary school books used by children, and a "deaf child" means a child too deaf to

be taught in a class of hearing children. A blind or deaf child is to be deemed a "child" until the age of sixteen years. The age for compulsory attendance at school for a blind child begins at five years, and of a deaf child at seven years. Subject to this every blind or deaf child must receive efficient elementary instruction in reading, writing, and arithmetic until the age of sixteen years (56 & 57 Vict., c. 42, secs. 1, 11, and 15).

It is the duty of every local education authority to enable blind and deaf children resident in their district, for whose elementary education efficient and suitable provision is not otherwise made, to obtain such education in some school for the time being certified by the Board of Education as suitable for providing such education, and for that purpose either to establish or acquire and to maintain a school so certified, or to contribute, on such terms and to such extent as may be approved by the Board of Education, towards the establishment or enlargement, alteration, and maintenance of a school so certified, or towards any of these purposes, and, where necessary or expedient, to make arrangements, subject to regulations of the Board, for boarding out any blind or deaf child in a home conveniently near to the certified school where the child is receiving elementary education.

This duty of the local education authority does not, however, extend to children who are idiots or imbeciles; or resident in a workhouse or in any institution to which they have been sent by a board of guardians from a workhouse; or are boarded out by guardians (sec. 2).

Where the local education authority contribute to the establishment, enlargement, or alteration of a certified school maintained by another authority, the terms approved by the Board of Education are to include security for repayment of the value of the contribution, in the event of the school ceasing to be certified. The terms of contribution may include provision for representation of the contributing authority on the governing body of the school to which it contributes, in cases where such

representation appears to the Board of Education to be practicable and expedient (secs. 2 and 3).

For the performance of their duties under the Act the local education authority may exercise the like powers as may be exercised by them for the provision of school accommodation for their district. With the sanction of the Local Government Board they may borrow for the purpose (sec. 5).

A school is not to be certified by the Board of Education as suitable for providing elementary education for blind or deaf children—(a) if it is conducted for private profit; nor (b) unless it is either managed by a local education authority, or the annual expenses of its maintenance are, to the extent of not less than one-third, defrayed out of sources other than local rates, or moneys provided by Parliament, and are audited and published in accordance with regulations of the Board of Education; nor (c) unless it is open at all times to the inspection of His Majesty's Inspectors of Schools and of any visitors authorized by any local education authority sending children to the school; nor (d) unless the requirements of the Act are complied with in the case of the school. A school so certified is to be deemed to be a certified efficient school (sec. 7).

If and so far as the school which a child is required to attend is not a public elementary school, it must, in all matters relating to the religious instruction and observances of the child, be conducted in accordance with the rules applying to industrial schools; and any local education authority may provide and maintain for the purposes of the Act a school so conducted. In selecting a school under the Act the authority are to be guided by the rules laid down in the Industrial Schools Act, 1866, and if a child is boarded out the authority are, if possible, to arrange for the boarding out being with a person belonging to the religious persuasion of the child's parent. Where a child is required to attend any school, the child is not to be compelled to receive religious instruction contrary to

the wishes of the parent, and is, so far as practicable, to have facilities for receiving religious instruction and attending religious services conducted in accordance with the parent's persuasion (sec. 8).

Where a local education authority incur any expense in respect of a blind or deaf child, the parent of the child is liable to contribute towards such expense. The parent is not, by reason of any payment made under the Act in respect of the child, to be deprived of any franchise, right, or privilege, or to be subject to any disability or disqualification (secs. 9 and 10).

The Board of Education may give aid from the parliamentary grant to a certified school in respect of education given to blind or deaf children to such amount and on such conditions as may be directed by the minutes of the Board in force for the time being (sec. 12).

A child resident in a school or boarded out under the Act is to be deemed to be resident in the district from which the child was sent (sec. 15).

From the 1st July, 1894, so much of any enactment in force at that date as empowered boards of guardians to send blind or deaf children to school was repealed, except as to children who are idiots or imbeciles, or resident in a workhouse or in an institution to which they have been sent by a board of guardians from a workhouse, or are boarded out by guardians. Where any blind or deaf child with respect to whom the powers of guardians are thus determined was on the 1st July, 1894, relieved in any institution by a board of guardians, the child is to continue chargeable as if the Act had not passed, until the expiration of six months' notice to be given by the guardians, if they think fit, to the authority of the district from which the child was sent (sec. 13).

Defective and Epileptic Children.

The 62 & 63 Vict., c. 32, makes provision for the elementary education of defective and epileptic children.

The local education authority of each district may make arrangements for ascertaining what children in their district, not being imbecile, and not being merely dull or backward, are *defective*, that is to say, what children by reason of mental or physical defect are incapable of receiving proper benefit from the instruction in the ordinary public elementary schools, but are not incapable by reason of such defect of receiving benefit from instruction in special classes or schools, and what children in their district are *epileptic* children, that is to say, what children, not being idiots or imbeciles, are unfit, by reason of severe epilepsy, to attend the ordinary public elementary schools (62 & 63 Vict., c. 32, sec. 1).

The local education authority, in making such arrangements, are to provide facilities for enabling any parent, who is of opinion that his child ought to be dealt with under the Act, to present such child to the authority to be examined, and an authority failing to provide these facilities is to be deemed to have acted in contravention of the Act. If a child is defective or epileptic, a certificate to that effect by a duly qualified practitioner approved by the Board of Education is required. It is the duty of the parent of any child required by the authority to be examined to cause the child to attend such examination, and a parent who fails to comply with the requirement is liable to a fine not exceeding five pounds (sec. 1).

Where the local education authority have ascertained that there are in their district defective children, they may make provision for their education by classes in public elementary schools certified by the Board of Education as special classes; or by boarding out such children in houses conveniently near to certified special classes or schools; or by establishing schools for defective children. They may make provision for the education of epileptic children by establishing schools, certified by the Board of Education, for such children. The powers thus conferred include power to establish or acquire and to maintain certified

schools, and to contribute, on terms approved by the Board of Education, towards the establishment, enlargement, or alteration, and towards the maintenance of certified schools.

The local education authority may, in respect of children who are resident in or whose permanent home is in their district, and who are attending certified special classes or schools in the district of another local education authority, contribute to that other authority the proportionate cost of the provision and maintenance of the special classes or schools (sec. 2).

A child resident in a school or boarded out under the Act is to be deemed to be resident in the district from which the child is sent (sec. 14).

The local education authority are to make provision for examination from time to time of children dealt with under the Act, in order to ascertain whether they have attained such a mental and physical condition as to be fit to attend the ordinary classes of public elementary schools; and the parent of a child may claim such an examination in the case of his child. An authority failing to make this provision is to be deemed to have acted in contravention of the Act.

The Board of Education are not to certify any establishment established after the commencement of the Act for boarding and lodging more than fifteen defective or epileptic children in one building, or comprising more than four such buildings (sec. 2).

A local education authority may provide guides or conveyances for children who, in the opinion of the authority, are, by reason of any physical or mental defect, unable to attend school without guides or conveyances (sec. 3).

The duty of a parent to provide elementary instruction for his child is, in the case of a defective or epileptic child over seven years of age in any place where a certified special class or school is within reach of the child's residence, to include the duty to cause the child to attend such a class or school, and a parent is not to

be excused from this duty by reason only that a guide or conveyance for the child is necessary.

In the case of an epileptic child above seven years of age, the local education authority may apply to a court of summary jurisdiction for an order requiring the child to be sent to a certified school for epileptics. If a parent fails to comply with such order, he is to be deemed to have failed to perform the duty prescribed by sec. 4 of the Elementary Education Act, 1876, and may be proceeded against accordingly (sec. 4).

The provisions of sec. 7 of the Elementary Education (Blind and Deaf Children) Act, 1893 (see p. 46), respecting the conditions and effect of the grant of certificates to schools for blind or deaf children apply, with the necessary modifications, to schools for defective or epileptic children established or proposed to be established under the Act, except that no requirement need be made as to the proportion of the expenses to be defrayed out of private sources (sec. 5).

The provisions of sec. 5 of the Act as to blind and deaf children (p. 46), with regard to the powers of a local education authority under that Act apply, with the necessary modifications, to local education authorities acting under this Act (sec. 6).

Grants from public money will be given in aid of the education of defective or epileptic children (sec. 7).

The parent of a defective or epileptic child will be liable to contribute towards the expenses of the child incurred by a local education authority, but will not, by reason of any payment made under the Act in respect of the child, be deprived of any franchise or be subject to any disability (sec. 8).

No duty attaches to a local education authority to receive in a special class or school established by them any child who is resident in, or whose permanent home in their opinion is in, the district of another local education authority; or who is resident in a workhouse, or in any institution to which he has been sent by the guardians

from a workhouse, or boarded out by the guardians; unless that other authority or the guardians, as the case may be, are willing to contribute towards the expenses of the education and maintenance of the child such sum as may be agreed on (sec. 10).

For the purpose of the Elementary Education Acts, a defective or epileptic boy or girl is to be deemed to be a child until the age of sixteen years, and the period of compulsory education is to extend to sixteen years, and the attendance of such a child at school may be enforced as if it were required by bye-laws, and the child is not, under such bye-laws, to be entitled to total or partial exemption from the obligation to attend school (sec. 11).

The expression "school" includes any institution in which defective or epileptic children are boarded or lodged as well as taught, and any establishment for boarding or lodging children taught in a certified special class or school (sec. 14).

ATTENDANCE OF CHILDREN AT SCHOOL AND RESTRICTIONS ON EMPLOYMENT OF CHILDREN.

Attendance at School.

The Elementary Education Act, 1876, declares that it shall be the duty of the parent of every child to cause such child to receive efficient elementary instruction in reading, writing, and arithmetic, and on the local education authorities devolves the enforcement of the provisions for securing the performance of this duty.

Bye-laws as to School Attendance.

The local education authority are empowered from time to time to make bye-laws as to school attendance, and where the local education authority are a county council they may make different bye-laws for different parts of the area under their jurisdiction (33 & 34 Vict., c. 75, sec. 74; 2 Edw. 7, c. 42, Third Schedule (4)).

The bye-laws may require the parents of children of an age not less than five years nor more than fourteen years—the age being fixed by the bye-laws—to cause their children to attend school, unless there is some “reasonable excuse.”

When a child is under efficient instruction in some other manner, or when the absence from school is on account of sickness, or any unavoidable cause, or where there is no public elementary school which the child can attend within a distance not exceeding three miles, by the nearest road, from the residence of the child—the distance being fixed by the bye-laws—it is to be deemed a “reasonable excuse.”

The bye-laws may also determine the time during which children are to attend school, but they are not to prevent the withdrawal of any child from any religious observance or instruction at the school, nor require the child's attendance at school on any day exclusively set apart for religious observance by the religious body to which the parent of the child belongs, nor be contrary to anything contained in any Act for regulating the education of children employed in labour.

Any child between twelve and fourteen years of age whom one of His Majesty's Inspectors certifies to have reached such standard of education as may be specified in the bye-laws, is to be wholly or partially exempted from the obligation to attend school.

This is subject to the provision that, in the case of children to be employed in agriculture, thirteen years may be fixed by the bye-laws as the minimum age for exemption from school attendance, and when this is done any such children over eleven and under thirteen years of age, who have passed the standard fixed for partial exemption from school attendance by the bye-laws, shall not be required to attend school more than two hundred and fifty times in any year.

Further, a child is entitled to obtain partial exemption from school attendance on attaining the age of twelve years, if such child has made three hundred attendances

in not more than two schools during each year for five preceding years, whether consecutive or not (33 & 34 Vict., c. 75, sec. 74; 56 & 57 Vict., c. 51; 62 & 63 Vict., c. 13, sec. 1; 63 & 64 Vict., c. 53, sec. 6).

Bye-laws may also be made providing for the remission of school fees in the case of children of poor parents, when such fees are payable, imposing penalties for breach of the bye-laws, and revoking or altering bye-laws previously made.

The bye-laws are not to come into operation until sanctioned by the Board of Education. Not less than one month before they are submitted to the Board for sanction, a printed copy is to be deposited for inspection at the office of the authority, and notice is to be given of the deposit; and a copy is to be given gratis to any ratepayer. The bye-laws when sanctioned come into operation and have effect as if they were statutory enactments (33 & 34 Vict., c. 75, sec. 74; 63 & 64 Vict., c. 53, sec. 6).

The bye-laws made by a school board or school attendance committee continue in force as if made by the local education authority, and may be revoked or altered accordingly (2 Edw. 7, c. 42, Second Schedule (8)).

When bye-laws have been made and sanctioned it is the duty of the local education authority to enforce them. No legal proceedings for non-attendance or irregular attendance at school are to be commenced by a person appointed to carry out the compulsory bye-laws of the authority except by direction of not less than two members of the education committee or of any sub-committee appointed by the committee for school attendance purposes (39 & 40 Vict., c. 79, secs. 23, 38; 2 Edw. 7, c. 42, Third Schedule (3)).

No penalty for the breach of a bye-law is to exceed such sum as *with the costs* will amount to *twenty shillings* for each offence (33 & 34 Vict., c. 75, sec. 74; 63 & 64 Vict., c. 53, sec. 6).

Under the 33 & 34 Vict., c. 75, sec. 74, it was optional with a school board whether or not they would make bye-laws as to the school attendance of children, but by sec. 2

of the Act of 1880, it was rendered the duty of the school board of every school district in which bye-laws were not in force at the passing of that Act (the 26th August, 1880) forthwith to make bye-laws for their district. If at any time after the 31st December, 1880, it appeared to the Education Department that in any district there were no bye-laws in force as to the attendance of children at school, the Education Department were empowered either to proceed as if the school board had made default in the performance of their duty, or themselves to make bye-laws as to school attendance for the district. Bye-laws so made by the Education Department or the Board of Education have the same effect and are to be enforced and be subject to revocation and alteration as if they had been made by the school board and had been sanctioned by the Board of Education.

As to the power of a local education authority where bye-laws are in force to obtain reasonable information from the managers of a public elementary school as to the attendance at the school of children residing in their district, see p. 37.

A justice may summon a parent or employer of a child required by a bye-law to attend school, to produce the child before a court of summary jurisdiction, and if without reasonable excuse he fails to do so, he will be liable to a penalty not exceeding *twenty shillings* (36 & 37 Vict., c. 86, sec. 24).

In proceedings for breach of a bye-law, a certificate purporting to be under the hand of the principal teacher of a public elementary school, stating that a child is or is not attending the school, or stating the particulars of the attendance of the child, or stating that the child has been certified by one of His Majesty's Inspectors of Schools to have reached a particular standard of education, will be evidence of the facts stated in the certificate (36 & 37 Vict., c. 86, sec. 24).

Where a child is apparently of the age alleged for the purpose of the proceeding, it will lie on the defendant to

prove that the child is not of such age. It will also be for the defendant to show in a case where a child is attending an elementary school which is not a public elementary school, that the school is efficient; and where the local education authority in consequence of the default of the managers or proprietor of an elementary school are unable to ascertain whether a child attends such school in conformity with the bye-laws, it will lie on the defendant to prove that the child has duly attended the school (36 & 37 Vict., c. 86, sec. 24).

In proceedings for an offence under a bye-law, the court, instead of inflicting a penalty, may make an order directing that the child shall attend school; and if the child fails to do so, the person on whom the order is made is to pay a penalty not exceeding that prescribed for breach of the bye-laws (36 & 37 Vict., c. 86, sec. 24).

Proceedings may, in the discretion of the local education authority or person instituting the same, be taken for punishing the contravention of a bye-law, notwithstanding that the act or neglect or default alleged as such contravention constitutes habitual neglect to provide efficient elementary education for a child within the meaning of sec. 11 of the Elementary Education Act, 1876 (see p. 56) (43 & 44 Vict., c. 23, sec. 4).

Bye-laws are not invalid by reason of their being more stringent than the provisions of the Act of 1876, and when any act, neglect, or default is punishable under that Act, and also under a bye-law for the time being in force, the proceedings may be instituted either under the Act or the bye-laws, so that proceedings be instituted under one enactment or bye-law only in respect of the same offence (39 & 40 Vict., c. 79, sec. 50).

Additional powers for the enforcement of school attendance are conferred on the local education authority by the Elementary Education Act, 1876. These are referred to subsequently (see p. 56).

With regard to the cases of blind and deaf children and defective and epileptic children, see pp. 44, 47.

School Attendance Orders.

In any case in which the parent of a child who is under the age of twelve years, or who being between the ages of twelve and fourteen years is prohibited from being taken into full time employment (see p. 58), habitually and without "reasonable excuse" neglects to provide efficient elementary education for the child, and in any case in which a child within the limits of age referred to is found habitually wandering, or not under proper control, or in the company of rogues, vagabonds, disorderly persons, or reputed criminals, the local education authority, after due warning to the parent, may complain to a court of summary jurisdiction. The court, if satisfied of the truth of the complaint, will be empowered to make an order termed an "attendance order," requiring that the child shall attend such "certified efficient school" willing to receive him as the parent may select, and in the event of the parent not making a selection, such public elementary school as the court may think expedient. The school which the child is to attend is to be named in the order, and the child is to attend such school every time that it is open, or in such other regular manner as the order may specify (39 & 40 Vict., c. 79, sec. 11).

The term "certified efficient school" includes not only a public elementary school but any elementary school which is not conducted for private profit, provided the following conditions are fulfilled: (1) That it is open at all reasonable times to the inspection of His Majesty's Inspector of Schools; (2) that like attendance as in a public elementary school is required of the scholars; (3) that such registers of attendance as are from time to time prescribed by the Board of Education are duly kept; and (4) that it is certified by the Board of Education to be an efficient school.

For the purpose of this section either of the following reasons is to be deemed a "reasonable excuse:" (1) That there is not within two miles, measured according to the

nearest road, from the residence of the child, any public elementary school open which the child can attend ; or (2) that the absence of the child from school has been caused by sickness or any unavoidable cause (sec. 11).

When an attendance order is not complied with, and there is no "reasonable excuse" for the non-attendance of the child at school, the local education authority may make complaint to a court of summary jurisdiction. In a first case of non-compliance, if the parent fails to satisfy the court that he has used all reasonable efforts to ensure the child's attendance at school in accordance with the order, a penalty may be imposed, but the penalty, with the costs, is not to exceed twenty shillings. If, however, the parent satisfies the court that all reasonable efforts have been made by him to enforce compliance with the order, the court may, without inflicting a penalty, order the child to be sent to a "certified day industrial school" (sec p. 42), or if it appears that there is no such school suitable for the child, then to a certified industrial school.

In the second or any subsequent case of non-compliance with an attendance order, the court may order the child to be sent to a certified day industrial school, or, where there is no suitable school of that character, to a certified industrial school, and, in addition, impose a penalty on the parent, subject to the limit as to amount above referred to ; or if they think fit, they may for each case of non-compliance inflict this penalty without ordering the child to be sent to an industrial school.

A complaint under this section with respect to a continuing non-compliance with an attendance order is not to be repeated by the local education authority at any less interval than two weeks.

Children sent to certified industrial schools or certified day industrial schools under this enactment are to be sent in like manner as if they were sent under the Industrial Schools Acts, and they are to be deemed to be sent in pursuance of those Acts.

The parent of a child sent to an industrial school or

certified day industrial school will, therefore, be liable to contribute to the cost of the maintenance and training of the child, as in cases under the Industrial Schools Acts (39 & 40 Vict., c. 79, sec. 12 ; 63 & 64 Vict., c. 53, sec. 6).

Restrictions on Employment of Children.

Under the Elementary Education Act, 1876, no person is to take into his employment any child under the age of [ten years], or any child between the ages of [ten] and fourteen years who has not obtained a certificate, as prescribed by that Act, of proficiency in reading, writing, and elementary arithmetic, or of previous due attendance at a certified efficient school, unless the child is employed and is attending school in accordance with the provisions of the Factory Act, or of a bye-law of a local education authority. The attendance required for a certificate of previous due attendance is raised by sec. 7 of the 63 & 64 Vict., c. 53, from 250 to 350 attendances after five years of age in not more than two schools during each year for five years whether consecutive or not. As to limits of age, see p. 59.

There are certain exceptions. A person is not to be deemed to have taken a child into employment within the meaning of the Act if it is proved (1) that during the employment there is not within two miles, measured according to the nearest road, from the residence of the child, any public elementary school open which the child can attend ; or (2) that the employment, by reason of being during the school holidays, or during hours when the school is not open, or otherwise, does not interfere with the efficient elementary instruction of the child, and that the child obtains such instruction by regular attendance for full time at a certified efficient school, or in some other equally efficient manner.

A person who takes a child into his employment in contravention of the Act of 1876, is liable to a penalty not exceeding 40s. (39 & 40 Vict., c. 79, secs. 5, 6).

Under the provisions of the Elementary Education Acts,

1880, 1893, 1899, and 1900, however, a person who takes into his employment a child of the age of twelve and under the age of fourteen years, resident in the district of a local education authority, before that child has obtained a certificate of having reached the standard of education fixed by a bye-law in force in the district for the total or partial exemption of children of the like age from the obligation to attend school, shall be deemed to take such child into his employment in contravention of the Elementary Education Act, 1876, and shall be liable to a penalty accordingly. Except in the cases of children to be employed in agriculture (see p. 52), a child under twelve years of age cannot obtain total or partial exemption from school attendance.

If any person takes a child into his employment in such a manner as to prevent the child from attending school in accordance with the bye-laws for the time being in force in the district, this employment also is to be deemed to be in contravention of the Elementary Education Act, 1876, and the person is to be liable to a penalty accordingly (56 & 57 Vict., c. 51, sec. 2).

The employment of a child by his parent will be an "employment" within the terms of the Acts if the employment is in any labour exercised by way of trade or for the purposes of gain (39 & 40 Vict., c. 79, sec. 47).

If there is reasonable cause to believe that a child is employed in any place in contravention of the Acts, a justice of the peace may make an order empowering an officer of the local education authority to enter the place at any reasonable time within forty-eight hours and examine the place and any person found therein, as to the employment of any child there. A person refusing admission to the officer, or obstructing him in the discharge of his duty, will for each offence be liable to a penalty not exceeding 20*l.* (39 & 40 Vict., c. 79, sec. 29).

If the offence of illegally employing a child is committed by an agent or workman of an employer, he will be liable to a penalty as if he were the employer.

If a child is taken into employment in contravention of the Acts, on the production by the parent of a false or forged certificate, or on a false representation by the parent that the child is of an age at which he could be lawfully employed, the parent will be liable to a penalty not exceeding 40s.

If an employer charged with taking a child into his employment in contravention of the Acts proves that he has used due diligence to enforce the observance of the provisions of the statutes, and either that the child has been employed without his knowledge or consent by some agent or workman, or that the child has been employed on the production of a false or forged certificate, or on a false representation by the parent as to the age of the child, under the belief, in good faith, in the genuineness and truth of the certificate or representation, the employer will be exempt from the penalty.

In the case of an employer satisfying the local education authority, inspector, or other person about to institute a prosecution that he is exempt under this section, and giving all facilities in his power for proceeding against the guilty person, the proceedings are to be instituted against such person and not against the employer (39 & 40 Vict., c. 79, sec. 39).

The provisions as to the employment of children are to be enforced by the local education authority, except as regards children employed in factories, workshops, and mines. In these cases the duty will devolve on the inspectors and sub-inspectors appointed by the Secretary of State, but the local authorities are to assist them by information or otherwise (39 & 40 Vict., c. 79, sec. 7).

Attendance of Children at School a Condition of Outdoor Relief.

The Elementary Education Act, 1876, contains a provision which in certain cases renders the attendance of children at school a necessary condition of relief out of the workhouse

being granted by the guardians. The enactment is to the effect that where relief out of the workhouse is given by the guardians or their order, by way of weekly or other continuing allowance, to the parent of a child between the ages of five and fourteen years, or to any such child, it shall be a condition for the continuance of the relief that elementary education in reading, writing, and arithmetic shall be provided for the child, if the child has not reached the standard in reading, writing, and arithmetic prescribed by Standard Three of the Code of 1876, or under the Act of 1876 (see p. 58) is prohibited from being taken into full time employment, or by the bye-laws in force in the district is required to attend school. The guardians are to give such further relief (if any) as may be necessary to enable a child to attend school in pursuance of the section; but it is not to be a condition of the relief that the child shall attend any public elementary school other than that which is selected by the parent, nor is the relief to be refused because the child attends or does not attend any particular public elementary school. The guardians are not, however, to give any relief to a parent in order to enable him to pay more than the ordinary fee payable at the school which he selects, and in no case is the fee to exceed threepence per week (39 & 40 Vict., c. 79, sec. 40).

This restriction on the granting of relief is modified by the Elementary Education Act, 1880, so far as regards any district in which bye-laws are in force. The section provides that in such districts a child shall not, as a condition of the continuance of relief out of the workhouse to him or his parent, be required to attend school further or otherwise than he is required to attend by a bye-law in force in the district in which he is resident (43 & 44 Vict., c. 23, sec. 5).

Returns to Local Authorities of Births and Deaths.

Sec. 25 of the Elementary Education Act, 1876, contains provisions with the view of affording facilities for

obtaining information as to the ages of children ; but these are practically superseded by sec. 134 of the Factory and Workshop Act, 1901, by which it is provided that where the age of any child or young person under the age of sixteen years is required to be ascertained or proved for any purpose connected with the education or employment in labour of the child or young person, any person shall on presenting a written requisition in such form and containing such particulars as the Local Government Board prescribe, and on payment of a fee of sixpence, be entitled to obtain a certified copy under the hand of the superintendent registrar or registrar of the entry in the register of births as to the birth of the child or young person. The form of requisition is on request to be supplied free of charge by the superintendent registrar or registrar.

Provision is also made for arrangements under which the registrar will furnish the local education authority with returns of the births and deaths registered by him (39 & 40 Vict., c. 79, sec. 26).

Parliamentary Grants.

The conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant shall be those contained in the minutes of the Board of Education in force for the time being, and shall amongst other matters provide that such grant shall not be made in respect of any instruction in religious subjects. But these conditions are not to require that the school shall be in connection with a religious denomination, or that religious instruction shall be given in the school, and shall not give any preference or advantage to any school on the ground that it is or is not provided by a local education authority (33 & 34 Vict., c. 75, sec. 97).

An elementary school is not a public elementary school unless the school is conducted in accordance with the conditions required to be fulfilled by an elementary school

in order to obtain an annual parliamentary grant (see p. 18).

In the case of a public elementary school not provided by the local education authority certain further conditions already referred to (see p. 32) must also be complied with.

The managers of an elementary school have power to fulfil the conditions required by the Elementary Education Act, 1870, to be fulfilled in order to obtain a parliamentary grant, notwithstanding any provision in any instrument relating to the trusts or management of their school (33 & 34 Vict., c. 75, sec. 99).

This provision extends to the fulfilment of any conditions, the performance of any duties, and the exercise of any powers under the Education Act, 1902 (2 Edw. 7, c. 42. Third Schedule (7)).

Aid Grant.

In lieu of the grants under the Voluntary Schools Act, 1897, and under sec. 97 of the Elementary Education Act, 1870, as amended by the Elementary Education Act, 1897, but in addition to the annual grants for public elementary schools under the code of the Board of Education, there is to be annually paid to every local education authority, out of moneys provided by Parliament—

- (a) A sum equal to four shillings per scholar ; and
- (b) An additional sum of three halfpence per scholar for every complete twopence per scholar by which the amount which would be produced by a penny rate on the area of the authority falls short of ten shillings a scholar. In estimating the produce of a penny rate in the area of a local education authority not being a county borough, the rate is to be calculated upon the county rate basis, which, in cases where part only of a parish is situated in the area of the local education authority, is to be apportioned in such manner as the Board of Education think just.

But if in any year the total amount of parliamentary grants payable to a local education authority would make

the amount payable out of other sources by that authority on account of their expenses under the Part of the Education Act, 1902, relating to elementary education less than the amount which would be produced by a rate of threepence in the pound, the parliamentary grants are to be decreased, and the amount payable out of other sources is to be increased by a sum equal in each case to half the difference.

For the purposes of this provision the number of scholars is to be taken to be the number of scholars in average attendance, as computed by the Board of Education, in public elementary schools maintained by the authority (2 Edw. 7, c. 42, sec. 10).

Special Grants to Schools.

Where a school is situate in a parish under the jurisdiction of the council of the county as the local education authority, and the population of the parish is less than 300, or the population within two miles, measured according to the nearest road, from the school, is less than 300, and there is no other public elementary school recognized by the Board of Education as available for the children of that parish, or that population, as the case may be, a special parliamentary grant may be made annually to the school to the amount, if the population exceeds 200, of 10%, and if it does not exceed 200, of 15%. This provision also applies in the case of a school situate in a borough or urban district of which the council are the local education authority, where the population within two miles from the school is less than 300 (39 & 40 Vict., c. 79, sec. 19; 2 Edw. 7, c. 42, Third Schedule (1)).

A special grant may also be made where the population of a parish under the jurisdiction of the council of a county as the local education authority, in which a public elementary school is situate, or the population within two miles, measured according to the nearest road, from the school, is less than 500, and there is no other

public elementary school recognized by the Board of Education as available for the children of that parish or that population, as the case may be. The special annual parliamentary grant which may be made under this provision is 10%. This grant is also payable where a school is situate in a borough or urban district of which the council are the local education authority, where the population within two miles from the school is less than 500 (53 & 54 Vict., c. 22 ; 2 Edw. 7, c. 42, Third Schedule (1)).

Fee Grants.

Fee grants are paid under the Elementary Education Act, 1891.

The fee grant in aid of the cost of elementary education is at the rate of ten shillings a year for each child of the number of children over three and under fifteen years of age in average attendance at any public elementary school the managers of which are willing to receive the grant, and in which the Board of Education are satisfied that the regulations as to fees are in accordance with the prescribed statutory conditions.

If in any case there is a failure to comply with any of these conditions, and the Board of Education are satisfied that there was a reasonable excuse for the failure, the Board may pay the fee grant, but in that case, if the amount received from fees has exceeded the amount allowed by the Act, they are to make a deduction from the fee grant equal to that excess (54 & 55 Vict., c. 56, sec. 1).

In any school receiving the fee grant (a) where the average rate of fees received during the school year ended last before the 1st of January, 1891, was not in excess of ten shillings a year for each child of the number of children in average attendance at the school ; or (b) for which an annual parliamentary grant had not fallen due before the 1st of January, 1891, no fee is, except as provided by the Act, to be charged for children over three and under fifteen years of age.

In any school receiving the fee grant where the average rate was so in excess, the fees to be charged for children over three and under fifteen years of age are not, except as provided by the Act, to be such as to make the average rate of fees for all such children exceed for any school year the amount of the excess (sec. 2).

In any school receiving the fee grant, where the average rate charged and received in respect of fees and books, and for other purposes, during the school year ended last before the 1st of January, 1891, was not in excess of ten shillings a year for each child of the number of children in average attendance at the school, no charge of any kind is to be made for any child over three and under fifteen years of age (sec. 3).

Notwithstanding the foregoing provisions, if the Board of Education are satisfied that sufficient public school accommodation, without payment of fees, has been provided for a school district, and that the charge of school fees or the increase of school fees for children over three and under fifteen years of age in any particular school receiving the fee grant is required owing to a change of population in the district, or will be for the educational benefit of the district, or any part of the district, they may from time to time approve the charge or increase of fees in that school, provided that the ordinary fee for the children shall not exceed sixpence a week.

The Board of Education may, if they think fit, make it an express condition of their approval that the amount received for any school year from the fees so charged or increased, or a specified portion of that amount, shall be taken in reduction of the fee grant which would otherwise have been payable for that school year, and in that case the fee grant is to be reduced accordingly (sec. 4).

EXPENSES OF LOCAL EDUCATION AUTHORITY.

The expenses of a local education authority incurred in respect of elementary education or under the Elementary

Education Acts, so far as not otherwise provided for, are to be paid in the case of the council of a county out of the county fund, and in the case of the council of a borough out of the borough fund or rate, or if no borough rate is levied out of a separate rate to be made, assessed, and levied in like manner as the borough rate, and in the case of the council of an urban district other than a borough in manner provided by sec. 33 of the Elementary Education Act, 1876.

This is subject to the following provisions :—

- (1.) The council of a county are not to raise any sum on account of their expenses as the local education authority in respect of elementary education within any borough or urban district the council of which are the local education authority for that purpose.
- (2.) The council of a county are to charge such portion as they think fit, not being less than one-half or more than three-fourths, of any expenses incurred by them in respect of capital expenditure or rent on account of the provision or improvement of any public elementary school on the parish or parishes which, in the opinion of the council, are served by the school.
- (3.) The county council are to raise such portion as they think fit, not being less than one-half or more than three-fourths, of any expenses incurred to meet the liabilities on account of loans or rent of any school board which are transferred to them, exclusively within the area which formed the school district in respect of which the liability was incurred, so far as it is within their area.
- (4.) Where under any local Act the expenses incurred in a borough for the purpose of the Elementary Education Acts are payable out of some fund or rate other than the borough fund or rate, the expenses of the council of the borough are to be payable out of that fund or rate instead of the borough fund or rate (2 Edw. 7, c. 42, sec. 18).

Where, before the 18th December, 1902, fees have been

charged in any public elementary school not provided by the local education authority, that authority shall, while they continue to allow fees to be charged in respect of the school, pay such proportion of the fees as may be agreed upon, or, in default of agreement, determined by the Board of Education, to the managers (sec. 14).

All receipts in respect of any school maintained by a local education authority, including any parliamentary grant, but excluding sums specially applicable for purposes for which provision is to be made by the managers, are to be paid to the local education authority (sec. 18 (2)).

Separate accounts of receipts and expenditure by a council of a borough under the Act are to be kept, and these accounts are to be made up and audited in like manner and subject to the same provisions as the accounts of a county council, and the enactments relating to the audit of these accounts, and to all matters relating thereto and consequential thereon, including all penal provisions, apply in lieu of the provisions of the Municipal Corporations Act, 1882, relating to accounts and audit (sec. 18 (3)).

Where any receipts or payments of money are entrusted by the local education authority to any education committee, or to the managers of any public elementary school, the accounts of those receipts and payments will be accounts of the local education authority, but the auditor of those accounts will have the same powers with respect to managers as he would have if the managers were officers of the local education authority (sec. 18 (5)).

BORROWING POWERS.

The local education authority may borrow for the purposes of the Elementary Education Acts, 1870 to 1900, and the Education Act, 1902, in the case of a county council as for the purposes of the Local Government Act, 1888, and in the case of the council of a county borough, borough, or urban district as for the purposes of the Public Health Acts, but the money borrowed by a county

borough, borough, or urban district council shall be borrowed on the security of the fund or rate out of which the expenses of the council are payable. As to the expenses of local education authorities, see p. 66.

Money so borrowed is not to be reckoned as part of the total debt of a county for the purposes of sec. 69 of the Local Government Act, 1888, or as part of the debt of a county borough, borough, or urban district for the purpose of the limitation on borrowing under sub-secs. 2 and 3 of sec. 234 of the Public Health Act, 1875 (2 Edw. 7, c. 42, sec. 19).

DEFAULT OF DUTY OF LOCAL EDUCATION AUTHORITY.

If the local education authority fail to fulfil any of their duties under the Elementary Education Acts or the Education Act, 1902, the Board of Education may, after holding a public inquiry, make such order as they think necessary or proper for the purpose of compelling the authority to fulfil their duty, and any such order may be enforced by *mandamus* (2 Edw. 7, c. 42, sec. 16).

SUPERANNUATION, &c., OF SCHOOL TEACHERS.

The Act 61 & 62 Vict., c. 57, provides for superannuation and other annuities and allowances to elementary school teachers certificated by the Board of Education.

As regards *teachers certificated after the 1st April, 1899*, no such teacher will be recognized as a certificated teacher by the Board of Education unless the Board are satisfied in the prescribed manner of his physical capacity. In the case of a teacher who becomes certificated after the date referred to :—

His certificate will expire on his attaining the age of sixty-five years, or, if the Board of Education, on account of his special fitness, allow his service to continue for a further limited time, then on the expiration of that limited time ;

The teacher, while serving in recorded service, is to contribute to a deferred annuity fund at the rate, if a man, of 3*l.*, and if a woman, of 2*l.*, a year, or at such increased rate as may for the time being be fixed by the Treasury ;

On his attaining the age of sixty-five years, or on any later date at which his certificate expires, he will be entitled, out of the deferred annuity fund, to such annuity for the remainder of his life in respect of his contributions to that fund as may be fixed by tables under the Act, but he will not be entitled to any return of contributions, or to any benefits in respect of his contributions other than that annuity ;

On his attaining the age of sixty-five years, or on any later date at which his certificate expires, if he has contributed to the deferred annuity fund in accordance with the Act, and his years of recorded service are not less than half the number of years which have elapsed since he became certificated, the Treasury may grant to him, out of moneys provided by Parliament, an annual superannuation allowance calculated at the rate of ten shillings for each complete year of recorded service.

Subject to certain conditions, a teacher who has become physically incapable, owing to infirmity of mind or body, of being an efficient teacher in a public elementary school, may be awarded out of moneys provided by Parliament an annual allowance called a "disablement allowance."

The contributions under the Act from certificated teachers are to be paid to the Board of Education at the prescribed time and in the prescribed manner by the teachers or their employers, and the receipt of the Board of Education for the amount of a contribution paid by the employer of a teacher will be a good discharge for the like amount of remuneration otherwise payable to the teacher.

As regards *teachers who became certificated before the 1st April, 1899*, each such teacher was given the option of accepting the Act. When the Act was accepted by

any such teacher within the prescribed time, it applies to him with the following modifications:—

The rate of ten shillings upon which the superannuation allowance is calculated may be augmented in the case of a man by threepence, and in the case of a woman by twopence, for each complete year of recorded service served before the 1st April, 1899 ;

If the teacher at the date of the acceptance had attained the age of sixty-five years or any greater age, and had served in recorded service throughout the seven years next before the commencement of the Act, the provisions with respect to the expiration of the certificate will apply as if the date of the acceptance were substituted for the date at which the teacher attained the age of sixty-five years ;

If the teacher had not at the date of the acceptance attained the age of sixty-five, he must serve in recorded service after the 1st April, 1899, and where, during any part of the seven years next before that date, he was not in recorded service, the duration of the recorded service after that date must not be less than that said part of the seven years.

Every annuity and allowance under the Act will be payable quarterly at such times as may be fixed by the Treasury, and any assignment of, or charge on, and every agreement to assign or charge any annuity or allowance to a teacher under the Act is void.

A superannuation allowance or disablement allowance may be forfeited by misconduct, and there are provisions for punishment for fraud or personation.

GENERAL PROVISIONS.

Conferences of Local Education Authorities.

The local education authority may, subject to the regulations made by the Board of Education, pay the reasonable expenses of any members of the authority, or of the

clerk of the authority, in attending any conference of local education authorities held for the purpose of discussing any matter connected with their duties, and any reasonable annual or other subscription towards the expenses of the conference. The local education authority may not pay the expenses of more than three persons attending a conference. The Board of Education may make such regulations as they think fit for regulating payments and the amount of payment by local education authorities (60 & 61 Vict., c. 33).

Inquiries by Board of Education.

The Board of Education may, if they think fit, hold a public inquiry for the purpose of the exercise of any of their powers or the performance of any of their duties under the Education Act, 1902.

When a public inquiry is held under the Elementary Education Acts or the Education Act, 1902, the Board of Education are to appoint some person who is to proceed to hold the inquiry. The person so appointed is to hold a sitting in some convenient place in the neighbourhood to which the subject of inquiry relates, and thereat is to hear, receive, and examine any evidence and information offered, and hear and inquire into any objections or representations made respecting the subject of the inquiry, with power from time to time to adjourn any sitting. Notice is to be published in such manner as the Board of Education direct of sittings (except adjourned sittings), seven days at least before the holding thereof. The person appointed is to make a report in writing to the Board of Education setting forth the result of the inquiry, and stating his opinion on the subject thereof, and his reasons for such opinion, and the objections and representations, if any, made on the inquiry, and his opinion thereon. The Board of Education are to cause a copy of the report to be deposited with the local education authority. The Board of Education may make an order directing that the costs

of the proceedings and inquiry shall be paid, either by the district as if they were expenses of the local education authority, or by the applicants for the inquiry; and the costs may be recovered, in the former case, as a debt due from the local education authority, and, in the case of the applicants, as a debt due jointly and severally from them. The Board of Education may, if they think fit, before ordering the inquiry to be held, require the applicants to give security for the expenses, and in case of their refusal may refuse to order the inquiry to be held (2 Edw. 7, c. 42, sec. 23 (10); 33 & 34 Vict., c. 75, sec. 73).

Inquiries by Local Government Board.

In the case of inquiries by the Local Government Board, sub-secs. 1 and 5 of sec. 87 of the Local Government Act, 1888 (which relate to local inquiries), apply with respect to any order, consent, sanction, or approval which the Local Government Board are authorized to make or give under the Education Act, 1902 (2 Edw. 7, c. 42, sec. 23 (9)).

Modification of Acts.

The Local Government Board may, after consultation with the Board of Education, by order make such adaptations in the provisions of any local Act (including any Act to confirm a provisional order and any scheme under the Municipal Corporations Act, 1882, as amended by any subsequent Act) as may seem to them to be necessary to make those provisions conform with the provisions of the Education Act, 1902, and may also in like manner, on the application of any council who have power as to education under that Act and have also powers as to education under any local Act, make such modifications in the local Act as will enable the powers under that Act to be exercised as if they were powers under the Act of 1902. Any such order shall operate as if enacted in the Act (2 Edw. 7, c. 42, Third Schedule (12)).

The substitutions of local education authorities for school boards, the areas for which the local education authorities act for school districts, the fund or rate out of which the expenses of the local education authorities are payable for school fund, and local rate are, unless the context otherwise requires, to be made in any enactment referring to or applying the Elementary Education Acts, 1870 to 1900, or any of them, so far as the reference or application extends (Third Schedule (10)).

Effect of References in certain Acts, &c., to Technical Instruction Acts, 1889 and 1891.

References in any enactment or in any provision of a scheme under the Charitable Trusts Acts, 1853 to 1894, or the Endowed Schools Acts, 1869 to 1889, or the Elementary Education Acts, 1870 to 1900, to any provisions of the Technical Instruction Acts, 1889 and 1891, or either of those Acts, are, unless the context otherwise requires, to be construed as references to the provisions of Part II. of the Education Act, 1902 (as to higher education), and the provisions of that Act are to apply with respect to any school, college, or hostel established, and to any obligation incurred, under the Technical Instruction Acts, 1889 and 1891, as if the school, college, or hostel had been established or the obligation incurred under Part II. of the Act of 1902 (2 Edw. 7, c. 42, Third Schedule (11)).

Miscellaneous Provisions.

Provision of Vehicles, &c., for Teachers and Children.

The powers of the local education authority include the provision of vehicles or the payment of reasonable travelling expenses for teachers or children attending school when the council consider such provision or payments required by the circumstances of their area or of any part of it (2 Edw. 7, c. 42, sec. 23).

Notices, &c.

The Elementary Education Acts contain provisions with respect to the publication of notices, the signature and service of notices and certificates, the admission of orders of the Board of Education as evidence, and other similar matters, to which it is unnecessary to refer in detail in the present statement.

POWERS AND DUTIES OF BOARDS OF GUARDIANS.

Contributions by Guardians to Expenses of Public Elementary Schools.

The board of guardians of a union may contribute towards such of the expenses of providing, enlarging, or maintaining any public elementary school as are certified by the Board of Education to have been incurred wholly or partly in respect of scholars taught at the school, who are either resident in a workhouse, or in an institution to which they have been sent by the guardians from a workhouse, or are boarded out by the guardians (63 & 64 Vict., c. 53, sec. 2).

Boards of guardians have similar powers with reference to contributions to expenses of providing, enlarging, or maintaining certified special classes or schools for defective and epileptic children. The local education authority have no duty imposed on them to receive in any such special class or school established by them any child who is resident in a workhouse, or in any institution to which he has been sent by the guardians from a workhouse, or is boarded out by the guardians, unless the guardians are willing to contribute towards the education and maintenance of the child such sum as may be agreed on between the authorities concerned.

With respect to the powers of guardians in the case of blind and deaf children, see p. 47, and in the case of children sent to a certified day industrial school, p. 43.

Payment of School Fees by Guardians.

When a parent, not being a pauper, by reason of poverty is unable to pay the ordinary fee for his child at a public elementary school, and the payment of a fee is necessary to entitle the child to attend the school, he is to apply to the guardians having jurisdiction in the parish in which he resides, and the guardians, if satisfied of his inability, are to pay the fee, not exceeding three pence a week, or such part as the parent in the opinion of the guardians is unable to pay. The parent is not to be controlled by the guardians in his selection of the public elementary school which his child shall attend, and the payment of the school fee by the guardians is not to deprive him of any franchise or right, or subject him to any disability or disqualification (39 & 40 Vict., c. 79, sec. 10).

The provisions as to the payment of the school fees in the case of pauper children have already been referred to (p. 60).

The moneys given by boards of guardians for the payment of school fees for the children of parents who are not paupers, when such fees are payable, are to be charged to the parish in which the parent is resident, in like manner as other parochial charges. The same mode of charging is to be adopted in any case in which the guardians give a parent relief to enable him to pay the amount required in respect of a child sent to a certified day industrial school (see p. 43).

Relief given by the guardians for the attendance at school of pauper children, when relief for this purpose is necessary, will be paid out of the common fund of the union. In the metropolis the relief thus given will be repayable from the Metropolitan Common Poor Fund.

TRANSITORY PROVISIONS.

Transfer of Properties, &c., of School Boards and School Attendance Committees.

The property, powers, rights, and liabilities (including any property, powers, rights, and liabilities vested, conferred, or arising under any local Act or any trust deed) of any school board or school attendance committee existing at the appointed day are transferred to the council exercising the powers of the school board (2 Edw. 7, c. 42, Second Schedule (1)).

The expressions "powers," "duties," "property," and "liabilities," unless the context otherwise requires, have the same meaning as in the Local Government Act, 1888 (sec. 24 (3)).

Loans transferred to a council are, for the purpose of the limitation on the powers of the council to borrow, to be treated as money borrowed under the Act of 1902 (Second Schedule (3)).

Any liability of an urban district council incurred under the Technical Instruction Acts, 1889 and 1891, and charged on any fund or rate, is to be charged on the fund or rate out of which the expenses of the council under the Act are payable (Second Schedule (4)).

Where the liabilities of a school board transferred to the local education authority comprise a liability on account of money advanced by that authority to the school board, the Local Government Board may make such orders as they think fit for providing for the repayment of any debts incurred by the authority for the purposes of those advances within a period fixed by the order, and, in case the money advanced to the school board has been money standing to the credit of any sinking fund or redemption fund or capital money applied under the Local Government Acts, 1888 and 1894, or either of them, for the repayment to the proper fund or

account of the amount so advanced. Any order of the Local Government Board under this provision shall have effect as if enacted in the Act (Second Schedule (6)).

Where a district council ceases by reason of the Act to be a school authority within the meaning of the Elementary Education (Blind and Deaf Children) Act, 1893, or the Elementary Education (Defective and Epileptic Children) Act, 1899, any property or rights acquired and any liabilities incurred under those Acts are to be transferred to the county council, and the county council may raise any expenses incurred by them to meet any liability of a school authority under those Acts (whether a district council or not), and transferred to the county council, off the whole of their area, or off any parish or parishes which in the opinion of the council are served by the school in respect of which the liability has been incurred (Second Schedule (7)).

Secs. 85 to 88 of the Local Government Act, 1894 (which contain transitory provisions), apply with certain modifications with respect to any transfer above mentioned (Second Schedule (8)).

Transfer of Officers, Compensation for Loss of Office or Emoluments, and Provisions as to Superannuation in Case of Officers transferred.

The officers of any authority whose property, rights, and liabilities are transferred under the Education Act, 1902, to any council, are to be transferred to and become the officers of that council, but the council may abolish the office of any such officer whose office they deem unnecessary.

Every officer so transferred is to hold his office by the same tenure and on the same terms and conditions as before the transfer, and while performing the same duties is to receive not less salary or remuneration than theretofore, but if any such officer is required to perform duties which are not analogous to or which are an unreasonable addition to those which he is required to perform at the

date of the transfer, he may relinquish his office, and any officer who so relinquishes his office, or whose office is abolished, is to be entitled to compensation.

A council may take into account continuous service under any school boards or school attendance committees in order to calculate the total period of service of any officer entitled to compensation.

If an officer of any authority to which the Poor Law Officers' Superannuation Act, 1896, applies is transferred to any council, and has made the annual contributions required to be made under that Act, the provisions of that Act will apply, subject to such modifications as the Local Government Board may by order direct.

Any local education authority who have established any pension scheme, or scheme for the superannuation of their officers, may admit to the benefits of that scheme any officers transferred under the Act on such terms and conditions as they think fit.

Sec. 120 of the Local Government Act, 1888, which relates to compensation to existing officers, applies, with certain modifications, as respects officers transferred under the Act, and also (with the necessary modifications) to any other officers who, by virtue of the Act or anything done in pursuance or in consequence of the Act, suffer direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, in like manner as it applies to officers transferred under the Act.

Sec. 68 of the Local Government Act, 1894 (which relates to the adjustment of property and liabilities), applies with respect to any adjustment required for the purposes of the Act (2 Edw. 7, c. 42, Second Schedule (16)-(22)).

Parliamentary Grants.

Where required for the purpose of bringing the accounts of a school to a close before the end of the financial year of the school, or for meeting any change consequent on the Act, the Board of Education may calculate any

parliamentary grant in respect of any month or other period less than a year, and may pay any parliamentary grant which has accrued before the appointed day at such times and in such manner as they think fit.

Any parliamentary grant payable to a public elementary school not provided by a school board in respect of a period before the appointed day is to be paid to the persons who were managers of the school immediately before that day, and is to be applied by them in payment of the outstanding liabilities on account of the school, and so far as not required for that purpose is to be paid to the persons who are managers of the school for the purposes of the Act, to be applied by them for the purposes for which provision is to be made under the Act by those managers, or for the benefit of any general fund applicable for those purposes. The Board of Education, however, may, if they think fit, pay any share of the aid grant under the Voluntary Schools Act, 1897, allotted to an association of voluntary schools, to the governing body of that association, if the governing body satisfy the Board that proper arrangements have been made for the application of any sum so paid (2 Edw. 7, c. 42, Second Schedule (11) (12)).

EDUCATION ACT, 1902.

(2 EDW. 7, C. 42.)

AN ACT TO MAKE FURTHER PROVISION WITH RESPECT
TO EDUCATION IN ENGLAND AND WALES.

[18th December, 1902.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

LOCAL EDUCATION AUTHORITY.

Local Education Authorities.

1. For the purposes of this Act the council of every county and of every county borough shall be the local education authority :

Provided that the council of a borough with a population of over ten thousand, or of an urban district with a population of over twenty thousand, shall, as respects that borough or district, be the local education authority for the purpose of Part III. of this Act, and for that purpose as respects that borough or district, the expression "local education authority" means the council of that borough or district.

By this section the council of every county and of every county borough are constituted the local education authority both for higher and elementary education

The council of every non-county borough with a population of over ten thousand and of every urban district with a population of over twenty thousand are the local education authority for the borough or district as the case may be for the purpose of Part III. of the Act, which relates only to elementary education. The population referred to is that according to the census of 1901. See sec. 23 (8).

According to the preliminary report of the census of 1901 and

the final reports of that census so far as they have been issued, the following are the non-county boroughs, with a population at the time of the census exceeding 10,000 :—

Accrington, Ashton-under-Lyne, Bacup, Banbury, Bangor, Barnsley, Barnstaple, Batley, Bedford, Berwick-upon-Tweed, Beverley, Bexhill, Blackpool, Boston, Bridgwater, Bridlington, Brighouse, Burslem, Bury St. Edmunds, Cambridge, Carlisle, Carmarthen, Chatham, Chelmsford, Cheltenham, Chepping Wycombe, Chesterfield, Chichester, Chorley, Clitheroe, Colchester, Colne, Congleton, Crewe, Darlington, Darwen, Deal, Dewsbury, Doncaster, Dover, Dukinfield, Durham, Ealing, Eastbourne, East Retford, Eccles, Falmouth, Faversham, Folkestone, Glossop, Grantham, Gravesend, Guildford, Harrogate, Hartlepool, Harwich, Haslingden, Hemel Hempstead, Hereford, Heywood, Hove, Hyde, Ilkeston, Jarrow, Keighley, Kendal, Kidderminster, King's Lynn, Kingston-upon-Thames, Lancaster, Leigh, Lewes, Longton, Loughborough, Lowestoft, Luton, Macclesfield, Maidenhead, Maidstone, Mansfield, Margate, Middleton, Morecambe, Morley, Mossley, Neath, Nelson, Newark, Newbury, Newcastle-under-Lyme, Newport (Isle of Wight), New Windsor, Ossett, Pembroke, Penzance, Peterborough, Pontefract, Poole, Pudsey, Ramsgate, Rawtenstall, Reigate, Richmond, Rochester, Royal Leamington Spa, Ryde, St. Albans, Salisbury, Scarborough, Shrewsbury, Smethwick, Southend-on-Sea, Southport, Stafford, Stalybridge, Stockton-on-Tees, Stoke upon-Trent, Sutton Coldfield, Swindon, Taunton, Thornaby-on-Tees, Tiverton, Todmorden, Torquay, Truro, Tunbridge Wells, Tynemouth, Wakefield, Wallsend, Warwick, Wednesbury, Wenlock, Weymouth and Melcombe Regis, Whitehaven, Widnes, Winchester, Workington, Worthing, and Wrexham.

According to the reports above referred to on the census of 1901, the following are the urban districts with a population at the time of the census of over 20,000 :—

Aberdare, Abertillery, Acton, Aldershot, Aston Manor, Barking Town, Barry, Beckenham, Bilston, Bromley, Cannock, Chadderton, Chiswick, Coseley, East Ham, Ebbw Vale, Edmonton, Enfield, Euth, Farnworth, Felling, Fenton, Finchley, Gillingham, Gorton, Gosport and Alverstoke, Handsworth, Hebburn, Hendon, Heston and Isleworth, Hindley, Hornsey, Ilford, Ince-in-Makerfield, Kettering, King's Norton and Northfield, Leyton, Llanelly, Merthyr Tydfil, Moss Side, Mountain Ash, Nuneaton and Chilvers Coton, Oldbury, Pemberton, Penge, Pontypridd, Radcliffe, Rhondda, Rowley Regis, Stretford, Shipley, Swinton and Pendlebury, Tipton, Tottenham, Twickenham, Wallasey, Walthamstow, Waterloo-with-Seaforth, Watford, Willesden, Wimbledon, Withington, and Wood Green.

No growth of population subsequent to the census of 1901 will affect the position of the council of a non-county borough or of an urban district under the Act, or will take the borough or district out of the jurisdiction of the county council for the purpose of Part III. of the Act as to elementary education. There may, however, be ground for the contention that when by reason of an extension of the boundaries of a non-county borough, which at the time of the census of 1901 had a population of less than 10,000, the population of the area included in the borough, according to that census, becomes more than 10,000, the council of the borough will be the local education authority for Part III. of the Act, to the exclusion of the council of the county. The same contention would apply in the case of an urban district where in consequence of an extension of the district the

population included in its area becomes, according to the census of 1901, more than 20,000.

When the council of a non-county borough or of an urban district will under the Act be the local education authority for Part III. as to elementary education, they may, at any time after the 18th December, 1902, by agreement with the council of the county and with the approval of the Board of Education, relinquish in favour of the council of the county their powers and duties as the local education authority for the borough or district for the purposes of Part III. of the Act. When these powers and duties are so relinquished the area of the authority as respects those powers will become part of the area of the county council (see sec. 20 (b)).

The council of a county and of a county borough and the council of a non-county borough or urban district when a local education authority are required to establish an education committee or committees constituted in accordance with a scheme made by the council and approved by the Board of Education. As to the powers of the council in relation to the education committee, see sec. 17 (2). The scheme must be in accordance with the provisions of that section, and by sub-sec. 4 it is provided that any person shall be disqualified for being a member of an education committee who by reason of holding an office or place of profit or having any share or interest in a contract or employment is disqualified for being a member of the council appointing the education committee. The provisions relating to such disqualifications are given in the note to sec. 17 (4).

There are, however, certain exceptions. The disqualification for appointment as a member of the education committee does not apply to a person by reason only of his holding office in a school or college aided, provided, or maintained by the local education authority appointing the committee. This saving applies to teachers in public elementary schools as well as those in schools for higher education.

The teachers in schools and colleges, which are provided or maintained by the council, will be disqualified for serving as members of the council, although not disqualified for serving on the education committee. Teachers in schools provided by the local education authority are clearly disqualified for membership of the authority: and under sec. 23 (7) teachers in a school maintained but not provided by the local education authority are in the same position as respects disqualification for office as members of the authority as teachers in a school provided by the authority.

This is subject to the provision in the Second Schedule (g), which enables the council, in the case of any person who on the 18th December, 1902, was a member of the council, and who will become disqualified for office in consequence of the Act, by resolution to relieve him from the disqualification for the temporary period referred to in the section.

When a county councillor is elected for a division of the county consisting wholly or partly of a non-county borough or urban district, the council of which are the local education authority for the purpose of Part III. of the Act as to elementary education, such councillor is not to vote in respect of any question arising before the county council which relates only to matters under Part III. of the Act (sec. 23 (3)).

With respect to the powers of the council of a non-county borough or of an urban district as regards higher education, whether they are

a local education authority under Part III. of the Act or not, see sec. 3.

As regards the expenses of a local education authority, see sec. 18 ; and as to powers of borrowing, see sec. 19.

PART II.

HIGHER EDUCATION

Power to aid Higher Education.

2.—(1.) The local education authority shall consider the educational needs of their area and take such steps as seem to them desirable, after consultation with the Board of Education, to supply or aid the supply of education other than elementary, and to promote the general co-ordination of all forms of education, and for that purpose shall apply all or so much as they deem necessary of the residue under section one of the Local Taxation (Customs and Excise) Act, 1890, and shall carry forward for the like purpose any balance thereof which may remain unexpended, and may spend such further sums as they think fit: Provided that the amount raised by the council of a county for the purpose in any year out of rates under this Act shall not exceed the amount which would be produced by a rate of twopence in the pound, or such higher rate as the county council, with the consent of the Local Government Board, may fix.

(2.) A council, in exercising their powers under this Part of this Act, shall have regard to any existing supply of efficient schools or colleges, and to any steps already taken for the purposes of higher education under the Technical Instruction Acts, 1889 and 1891.

The local education authority for higher education—that is to say, the council of every county and county borough—have imposed on them the duty of considering the educational needs of their area, and of taking such steps as seem to them desirable, after consultation with the Board of Education, to supply or aid the supply of education other than elementary, and to promote the general co-ordination of all forms of education.

Although the local education authority are required to consult with the Board of Education as to the steps which may be taken, it rests exclusively with the local education authority to determine what those steps shall be. The Act confers no such powers on the Board of Education to compel action by the local education authority with regard to higher education as they have with respect to elementary education. The fact that the councils of counties and of county boroughs are the local education authorities both for higher and

elementary education necessarily gives them great advantage in promoting the general co-ordination of all forms of education, which is referred to in the section.

The powers conferred on the local education authorities by the Act with respect to supplying or aiding the supply of education other than elementary are very wide. There are no restrictions limiting the effect of these very general words, except the provision in sub-sec. 2, that the council, in exercising their powers, are to have regard to any existing supply of efficient schools or colleges, and to any steps already taken for the purposes of higher education under the Technical Instruction Acts, 1889 and 1891.

The other provisions of the Act extend rather than limit the exercise of these powers.

Under sec. 22 (3) the power to supply or aid the supply of education other than elementary includes a power to train teachers, and to supply or aid the supply of any education, except where that education is given at a public elementary school. Under sec. 23 (2) it includes power to make provision for supplying or aiding the supply of education other than elementary outside their area where they consider it expedient to do so in the interests of their area, and also includes the power to provide or assist in providing scholarships for and to pay and assist in paying the fees of students ordinarily resident in the area of the council at schools or colleges or hostels within or without that area.

"Colleges" include any educational institution, whether residential or not.

As to hostels, the Attorney-General, in reply to a question whether the term "educational institution" included hostels where no lectures were given, but where students lived, if they were affiliated to some other institution to which the students went by day for the purpose of lectures, said, A hostel which is simply a boarding house is not included in the term "college." When the hostel is affiliated to an educational institution, no question would arise, because then it would be part of a whole and would be an educational institution (Parl. Debates (1902), vol. 14, 1067).

The powers of the local education authority for higher education further include the provision of vehicles or the payment of reasonable travelling expenses for teachers or children attending school or college whenever the council consider that the circumstances of their area or any part of it require this (sec. 23 (1)). See notes on section referred to.

As to religious instruction and worship in schools, colleges, and hostels aided or provided by the local education authority under the powers conferred by this section, see sec. 4.

The intention of the Act is that there shall be as far as practicable a clear line of distinction between the higher education and the elementary education for which it provides. The local education authority, under Part III. (as to elementary education), will not be able, as an authority for elementary education, to continue the science and art schools and classes to which the decision of the Court of Appeal in *R. v. Cockerton* (see p. 466) applied, the authority under which they have since that decision been temporarily continued ceasing on the "appointed day" under sec. 27 of this Act. Neither will such local education authority be empowered to carry on evening schools, sec. 22 (1) providing that an elementary school shall not

include any school carried on as an evening school under the Regulations of the Board of Education.

There is also a limit of the age of children to whom instruction is to be given in a public elementary school under the Elementary Education Acts, the only exception being when the limit is extended by the Board of Education in consequence of there being no suitable higher education available within a reasonable distance of the school (sec. 22 (2)).

The Technical Instruction Acts, 1889 and 1891 (52 & 53 Vict., c. 76, and 54 & 55 Vict., c. 4), are repealed from the "appointed day" under sec. 27; but the provisions of Part II. of this Act (as to higher education) will apply to any school, college, or hostel established, and to any obligation incurred under those Acts as if the school, college, or hostel had been established or the obligation had been incurred under Part II. of this Act. References in any enactment or in any provision of a scheme under the Charitable Trusts Acts, 1853 to 1894, or the Endowed Schools Acts, 1869 to 1889, to any provisions of the Technical Instruction Acts or either of those Acts, unless the context otherwise requires, are to be construed as references to Part II. of this Act. (Third Schedule (11)).

As regards the funds available to the local education authority for their expenditure in the supply of, or in aiding the supply of, higher education, the receipts first referred to are those under the Local Taxation (Customs and Excise) Act, 1890 (53 & 54 Vict., c. 60). Under that Act certain duties on spirits and beer received by the Board of Inland Revenue are paid into "the Local Taxation Account" at the Bank of England, and out of the English share of the duties so paid in a sum of £300,000 is paid by the Local Government Board towards police superannuation, and the residue is paid by that Board to the councils of counties and county boroughs, the amounts being distributed as if this residue were part of the English share of the local taxation probate duty. The Act provided that the council of any county or county borough might contribute any sum received by them in respect of the residue referred to, or any part of that sum, for the purposes of technical instruction within the meaning of the Technical Instruction Act, 1889, and might make that contribution over and above any sum that might be raised by rate under that Act. There was no obligation on the councils to thus apply these moneys, but in later years nearly the whole of the amount has been used for this purpose. The present Act contemplates that the full sum which may be received by the council of a county or county borough shall be applied towards the expenses of supplying or aiding the supply of higher education, although not necessarily in the year in which it may be received. If in any year the council do not deem it necessary to apply the full amount to this purpose they are not required to do so, but any balance which may remain unexpended is to be subsequently so applied.

The section applies not only to any future balances, but also to any balance of the residue remaining unexpended and unappropriated by any council at the "appointed day" under sec. 27. (Second Schedule (5)).

A parliamentary return is issued in each year giving particulars of the amounts paid from the residue above referred to to each county and county borough. The last return issued (H. C. 274, 1902) was

for the year 1901-1902, and may be obtained from Messrs. Eyre and Spottiswoode, East Harding Street, Fleet Street, E.C.

The local education authority may also spend for the purpose of the powers above referred to such further sums as they think fit. But the amount which the council of a county may raise for this purpose in any one year out of rates under the Act is not to exceed twopence in the pound or such higher rate as the council, with the consent of the Local Government Board, may fix. There is no limitation of the rate which may be raised for the purpose by the council of a county borough.

Under the Technical Instruction Acts the amount which could be raised for technical and manual instruction was one penny in the pound.

The amount which will be produced by any rate in the pound is to be estimated in accordance with regulations made by the Local Government Board (sec. 23 (4)).

The rate in the case of a county, subject to the exception provided for by sec. 18 (1) (a), will be levied by the county council throughout their county, inclusive of non-county boroughs and urban districts, and the powers of rating for the purpose of education other than elementary which is conferred by sec. 3 on the councils of the boroughs and districts referred to, are powers which may be exercised concurrently with those of the county council.

As to relinquishment of powers by the council of a non-county borough or of an urban district, see notes on secs. 3 and 20 (b).

The question arises whether when there is such relinquishment the council of the county can levy on the borough or district an amount which would be produced by a rate of one penny in the pound in addition to the rate of twopence or the higher rate in the pound provided for by this section. As to this, see note on sec. 3.

Under sec. 18 (1) (a) the county council may, if they think fit (after giving reasonable notice to the overseers of the parish or parishes concerned), charge any expenses incurred by them under the Act with respect to education other than elementary to any parish or parishes which in the opinion of the council are served by the school or college in connection with which the expenses have been incurred.

In connection with the question of higher education, see also the provisions in secs. 3 and 4 of the 62 & 63 Vict., c. 33, *post*, as to inspection of secondary schools and the formation of a register of teachers.

With respect to expenses incurred by a local education authority under this section, see sec. 18; and as to borrowing powers, see sec. 19.

Sec. 20 (a) provides that arrangements may be made with the council of any county, borough, district or parish, whether a local education authority or not, for the exercise by the council, on such terms and subject to such conditions as may be agreed on, of any powers of a council under the Act in respect of the management of any school or college within the area of the council.

See also the provisions in the Third Schedule (12) as to the power of the Local Government Board by order to make such adaptations in the provisions of local Acts as may seem to them to be necessary to make those provisions conform with the provisions of this Act.

The regulations of the Board of Education for Secondary day

schools from 1st August, 1902, to 31st July, 1903 (Cd. 1102), those for Evening schools for the same period (Cd. 1044), and Supplementary regulations for secondary day schools and for evening schools (Cd. 1160), may be obtained from Messrs. Eyre and Spottiswoode, East Harding Street, Fleet Street, E.C.

Concurrent Powers of Smaller Boroughs and Urban Districts.

3. The council of any non-county borough or urban district shall have power as well as the county council to spend such sums as they think fit for the purpose of supplying or aiding the supply of education other than elementary: Provided that the amount raised by the council of a non-county borough or urban district for the purpose in any year out of rates under this Act shall not exceed the amount which would be produced by a rate of one penny in the pound.

This section follows the lines of the Technical Instruction Act, 1889. Under that Act the councils of boroughs and urban districts were empowered to supply or aid the supply of technical and manual instruction, and to raise for that purpose a rate not exceeding one penny in the pound.

Except as to the limitation under this section of the amount to be raised in any one year out of rates, the council of a non-county borough or urban district, but not as a local education authority under the Act, have the same powers as the council of a county for the purpose of supplying or aiding the supply of education other than elementary. As regards those powers, see note on sec. 2.

The amount which would be produced by a rate of one penny in the pound is to be estimated in accordance with regulations made by the Local Government Board (sec. 23 (4)).

The council of a non-county borough or urban district have no absolute duty imposed on them to supply or aid the supply of higher education. The section confers on them the power to do so, and to expend such sums as they think fit for the purpose, subject to the limit of rating. The only exception is when the council have already incurred liabilities under the Technical Instruction Acts which are still outstanding, and for which provision must be made.

It will devolve on any council exercising powers under this section to make a scheme for the establishment of an education committee in accordance with sec. 17, unless under sub-sec. 1 of that section they determine that an education committee is unnecessary in their case.

Liabilities which were incurred by an urban district council under the Technical Instruction Acts and charged on any fund or rate will become charged on the fund or rate out of which their expenses are payable under sec. 18 (1). See note on Second Schedule (4).

As previously stated, the powers of rating by the council of a non-county borough or urban district will be concurrent with those of the council of the county. The fact that the council of the borough or district levy a rate in their own area for purposes of higher education

will not affect the right of the county council also to levy a rate for like purposes in that area.

The council of a non-county borough or urban district can, however, under sec. 20 (b) at any time after the 18th December, 1902, by agreement with the council of the county, and with the approval of the Board of Education, relinquish in favour of the council their powers under this section, and in that case the powers of the authority so relinquished cease. They cannot be relinquished temporarily and then resumed.

The Board of Education appear to consider that when any council thus relinquish their powers under the section, the provision referred to gives the county council the power to levy in the borough or district a rate of like amount to that which the council of the borough or district might have levied under the section, in addition to the rate which the county council can raise under sec. 2. The Board, in their memorandum on the Act (circular 470), see Appendix, p. 468, give as items of the main sources of income of a county council for higher education . . .

“(2) The county rate, which for this purpose must not exceed two pence in the pound, unless by consent of the Local Government Board, and . . .

“(4) Where a borough or urban district which is a local education authority relinquishes to the county its powers under Part. II. of the Act for that borough or district, an additional rate not exceeding one penny in the pound.”

Where the council, under the provision above referred to, relinquish their powers and duties in favour of a county council, any property or rights acquired, and any liabilities incurred for the performance of the powers and duties relinquished, including any property or rights vested or arising, or any liabilities incurred under any local Act or trust deed are transferred to the county council. Second Schedule (2).

The scheme which by sec. 17 is required to be made for the establishment of an education committee, unless the council determine that a scheme in their case is unnecessary, may for all or any purposes of the Act provide for the constitution of a joint education committee for any area formed by a combination of counties, boroughs, or urban districts, or of parts thereof. The Board of Education have suggested that the formation of such committees might be convenient in the case of boroughs or urban districts which may not desire to relinquish permanently their powers under the Act, but may nevertheless desire to work in close co-operation with the county in which they are situated.

The Board of Education further state that in the event of a relinquishment by the council of a non-county borough or urban district of their powers under this section in favour of the county council, it would be possible for the county to transfer back to the borough or urban district their powers of management in respect of any school or college within the area of the relinquishing council under sec. 20 (a).

With respect to the expenses of a council under this section, see sec. 18 ; and as to their borrowing powers, see sec. 19.

See also Third Schedule (12) as to the powers of the Local Government Board by order to make such adaptations in the provisions of any Local Act as may seem to them to be necessary to make those provisions conform with the provisions of this Act.

Religious Instruction.

4.—(1.) A council, in the application of money under this Part of this Act, shall not require that any particular form of religious instruction or worship or any religious catechism or formulary which is distinctive of any particular denomination shall or shall not be taught, used, or practised in any school, college, or hostel aided but not provided by the council, and no pupil shall, on the ground of religious belief, be excluded from or placed in an inferior position in any school, college, or hostel provided by the council, and no catechism or formulary distinctive of any particular religious denomination shall be taught in any school, college, or hostel so provided, except in cases where the council, at the request of parents of scholars, at such times and under such conditions as the council think desirable, allow any religious instruction to be given in the school, college, or hostel, otherwise than at the cost of the council: Provided that in the exercise of this power no unfair preference shall be shown to any religious denomination. (1)

(2.) In a school or college receiving a grant from, or maintained by, a council under this Part of this Act,

(a) A scholar attending as a day or evening scholar shall not be required, as a condition of being admitted into or remaining in the school or college, to attend or abstain from attending any Sunday school, place of religious worship, religious observance, or instruction in religious subjects in the school or college or elsewhere; and

(b) The times for religious worship or for any lesson on a religious subject shall be conveniently arranged for the purpose of allowing the withdrawal of any such scholar therefrom. (2)

(1) The first part of this sub-section refers to schools, colleges, or hostels aided but not provided by the councils of counties and county boroughs under sec. 2 of the Act, and the councils of non-county boroughs and urban districts under sec. 3, and the second part to schools, colleges, and hostels provided by councils under those sections.

For definition of the terms "colleges" and "hostels," see note on sec. 2.

As regards schools, colleges, or hostels aided but not provided by councils, the council in the application of money available for purposes of higher education are not to require that any particular form of religious instruction or worship or any religious catechism or formulary which is distinctive of any particular denomination shall or shall not

be taught, used, or practised in any such school, college, or hostel. It will therefore rest with those who have the management of such institutions, subject to any trusts on which they are held, to determine whether or not they shall be conducted on Church of England or other denominational lines.

With respect to schools, colleges, or hostels provided by the council no pupil is to be excluded therefrom or placed in an inferior position therein on the ground of his religious belief. Further, no catechism or formulary distinctive of any particular religious denomination is to be taught in the institution, except in cases where the council, at the request of parents or scholars, at such times and under such conditions as the council think desirable, allow any religious instruction to be given otherwise than at the cost of the council; but when the council exercise this power no unfair preference is to be shown to any religious denomination.

(2) The provision in this sub-section refers to schools and colleges, whether receiving a grant from or maintained by a council for the purpose of education other than elementary, and applies to scholars attending such schools or colleges either as day or evening scholars.

PART III.

ELEMENTARY EDUCATION.

Powers and Duties as to Elementary Education.

5. The local education authority shall throughout their area have the powers and duties of a school board and school attendance committee under the Elementary Education Acts, 1870 to 1900, and any other Acts, including local Acts, and shall also be responsible for and have the control of all secular instruction in public elementary schools not provided by them, and school boards and school attendance committees shall be abolished.

Under this section all school boards, with the exception of the school board for London, and all school attendance committees—whether appointed by guardians, the councils of boroughs, or the councils of urban districts—are abolished from the “appointed day” as prescribed by sec. 27.

For the school boards and school attendance committees thus abolished are substituted the local education authorities for the purpose of Part III. of the Act—these authorities being the council of every county and of every county borough and the council of every non-county borough which according to the census of 1901 had a population at the time of the census of more than ten thousand, and of every urban district which according to that census had a population of more than twenty thousand, except when the council of any such non-county borough or urban district may have (under sec. 20 (b)) relinquished their powers in favour of the county council.

The local education authorities have conferred on them all the powers and duties of a school board and school attendance committee under the Elementary Education Acts, 1870 to 1900, and any other Acts, including local Acts. They have not merely the powers and duties of a school board in a district where there has been a school board and those of a school attendance committee in a district which has been under the jurisdiction of a school attendance committee, but they have vested in them all the powers and duties both of a school board and of a school attendance committee "throughout their area."

As regards the Elementary Education Acts, in the following pages those Acts, so far as they are unrepealed, with other Acts relating to them, are given as they will apply throughout the areas under the jurisdiction of the local education authorities, the modifications made by this Act being shown either in the sections or in the notes to the sections. As to these modifications, see Third Schedule (1 to 9).

In the case of the Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict., c. 42), and the Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict., c. 32), *post*, the school authorities for the purpose of those Acts were the school board in a district where there was a school board, and in other districts either the council of the borough or the council of an urban district other than a borough, or the council of the rural district. The local education authorities take the place of and succeed to the powers and duties of the school authorities under those Acts.

With respect to the transfer to the local education authority of the powers and duties of a school board under a local Act it will be observed from the Third Schedule (12) that the Local Government Board may, after consultation with the Board of Education, make such adaptations in the provisions of any local Act (including any Act for the confirmation of a provisional order and any scheme under the Municipal Corporations Act, 1882, as amended by any subsequent Act) as may seem to them to be necessary to make those provisions conform with the provisions of this Act.

It will be the duty of each local education authority, except in the case where the council of a non-county borough or urban district under sec. 20 (*b*) relinquish their powers in favour of a county council, to make a scheme for the establishment of an education committee. For provisions on this subject, see sec. 17. See also the provisions in sub-sec. 2 of that section as to the relative powers of the local education authority and the education committee appointed by them.

Notwithstanding the delegation of powers under that section by the local education authority to the education committee, the local education authority will be responsible for the due performance of the duties entrusted to them, and in the event of a failure to fulfil these duties, the proceedings under sec. 16 for enforcing the performance of the duty would be against the local education authority and not against the education committee.

The entire control of the public elementary schools provided by the local education authority will necessarily be vested in them, subject to delegation of powers to the education committee.

For definition of the term "public elementary school," and as to the schools which are to be treated as provided by the local education authority, see notes on sec. 6.

Managers appointed for these schools under sec. 6 will only have

authority to deal with such matters relating to the management of the school, and subject to such conditions and restrictions as the local education authority determine.

In the case of a public elementary school not provided by the local education authority, the authority are responsible for and have the control of all secular instruction. They are also to maintain and keep efficient any such school within their area which is necessary, and to have the control of all expenditure required for that purpose other than expenditure for which, under the Act, provision is to be made by the managers, but only so long as the conditions and provisions specified in sec. 7 are complied with. See notes on that section.

The local education authority, in the case of a non-county borough or urban district may, under sec. 20 (b), at any time after the 18th December, 1902, by agreement with the council of the county, and with the approval of the Board of Education, relinquish in favour of the county their powers and duties under the Act with regard to elementary education, and in that case the powers and duties so relinquished cease, and the area of the authority as respects those powers becomes part of the area of the county. Such relinquishment cannot be temporary only; it would have effect permanently. The Second Schedule (2) provides for the transfer to the council of the county of any property or rights acquired and any liabilities incurred for the performance of the powers and duties relinquished.

The scheme which by sec. 17 is required to be made for the establishment of an education committee may for all or any purposes of the Act provide for the constitution of a joint committee for any area formed by a combination of counties, boroughs, or urban districts or of parts thereof.

The Board of Education suggest that "the formation of a joint committee may be convenient in the case of boroughs or urban districts which may not desire to relinquish permanently their powers under the Act, but may, nevertheless, desire to work in close co-operation with the county in which they are situated. Arrangements for the formation of such a committee may be made for a limited period."

The Board of Education also state that "it would be possible for the council to transfer back to the borough or urban district its powers of management in respect of any school . . . within the area of the relinquishing council, under sec. 20 (a)."

With reference to the expenses of the local education authority under this part of the Act, see sec. 18; and as to powers of borrowing, see sec. 19.

The transfer of powers from school boards, school authorities, and school attendance committees to the local education authorities renders necessary incidental and consequential provisions, such as those relating to transfer of property and officers and adjustment. These are dealt with in the Second Schedule to the Act.

That schedule deals with --

The transfer of property, powers, rights, and liabilities of school boards and school attendance committees to the council exercising the powers of the school board (1).

The transfer of property or rights acquired and liabilities incurred when under sec. 20 (b) a council relinquishes powers and duties in favour of the county council (2).

The repayment of debts which have been incurred by the local

education authority for the purpose of advances by that authority to the school board, when the liabilities of a school board transferred to the local education authority comprise a liability on account of money so advanced (6).

The transfer to the county council of any property or rights acquired and any liabilities incurred under the Elementary Education (Blind and Deaf Children) Act, 1893, or the Elementary Education (Defective and Epileptic Children) Act, 1899, by a district council which ceases to be a school authority (7).

The application with respect to the above-mentioned transfers of the transitory provisions contained in secs. 85 to 88 of the Local Government Act, 1894, subject to certain modifications (8).

See especially the provision in sec. 87 (2) of the Local Government Act, 1894, that it shall be the duty of every authority whose powers, duties, and liabilities are transferred, to liquidate so far as practicable before the "appointed day" all current debts and liabilities incurred by that authority.

Relief in certain cases from disqualification for office as members of the council for a temporary period (9).

The continuance until the "appointed day" under sec. 27 of the term of office of members of school boards holding office on the 18th December, 1902, or appointed to fill casual vacancies after that date (10).

The payments of the parliamentary grant for a school when the existing managers and the local education authority have each had the management of the school under their control for part of the school year (11 and 12).

The duty of the managers of a public elementary school, whether provided by a school board or not, and any school attendance committee to furnish to the council which will on the appointed day become the local education authority such information as that council may reasonably require (15).

The transfer to the council of officers of an authority whose powers, rights, and liabilities are transferred to the council, and the abolition of office of any such officer whose office is deemed unnecessary, and the compensation payable to an officer whose office is abolished or who relinquishes his office in consequence of being required to perform duties which are not analogous to or are an unreasonable addition to those which he was required to perform at the date of the transfer, and to any other officer who by reason of the Act suffers direct pecuniary loss (16-18 and 21).

The application of the Poor Law Officers' Superannuation Act, 1896, with such modifications as the Local Government Board may direct, in the case of an officer to whom that Act has applied and who under this Act is transferred to any council (19).

The admission of an officer transferred under the Act to the benefits of any pension scheme or scheme for the superannuation of officers which has been established by the local education authority (20).

The application of sec. 68 of the Local Government Act, 1894, to any adjustment required for the purposes of this Act (22).

See the notes on the provisions referred to.

Management of Schools.

6.—(1.) All public elementary schools provided by the local education authority shall, where the local education authority are the council of a county, have a body of managers consisting of a number of managers not exceeding four appointed by that council, together with a number not exceeding two appointed by the minor local authority.

Where the local education authority are the council of a borough or urban district they may, if they think fit, appoint for any school provided by them a body of managers consisting of such number of managers as they may determine.

(2.) All public elementary schools not provided by the local education authority shall, in place of the existing managers, have a body of managers consisting of a number of foundation managers not exceeding four appointed as provided by this Act, together with a number of managers not exceeding two appointed—

(a) Where the local education authority are the council of a county, one by that council and one by the minor local authority ; and

(b) Where the local education authority are the council of a borough or urban district, both by that authority.

(3.) Notwithstanding anything in this section—

(a) Schools may be grouped under one body of managers in manner provided by this Act ; and

(b) Where the local education authority consider that the circumstances of any school require a larger body of managers than that provided under this section, that authority may increase the total number of managers, so, however, that the number of each class of managers is proportionately increased.

With regard to the term “public elementary school,” sec. 3 of the Elementary Education Act, 1870, defines the term “elementary school” as meaning “a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of instruction, from each scholar, exceed ninepence a week.” The term does not, however, include any school carried on as an evening school under the regulations of the Board of Education (see sec. 22). In order that an elementary school may be a “public elementary school” the school must be conducted

in accordance with certain regulations with regard to religious observances and instruction in religious subjects, and it must at all times be open to the inspection of any of His Majesty's Inspectors of Schools. The school must also be conducted in accordance with the conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant. As to these regulations and conditions, see 33 & 34 Vict., c. 75, secs. 7 and 14, *post*, and notes thereon.

The section refers to two classes of schools—schools provided by the local education authority and schools not so provided. Schools which have been provided by school boards, and which are by operation of this Act transferred to the local education authority, as well as schools which that authority may themselves provide, are to be treated as schools provided by the local education authority. Schools which are deemed to have been provided by a school board are also to be deemed to have been provided by the local education authority (see Second Schedule (13) to this Act). The schools referred to are (a) schools which under sec. 23 of 33 & 34 Vict., c. 75, *post*, have been transferred by the managers to a school board, that section providing that every school so transferred shall, to such extent and during such times as the school board have under the terms of transfer any control over the school, be deemed to be a school provided by the school board; and (b) schools connected with an endowment, charity, or trust of which the school board have been constituted the trustees under sec. 13 of 36 & 37 Vict., c. 86, *post*, that section providing that every such school shall be deemed to be provided by the school board.

As regards *public elementary schools provided by the local education authority*—

When the local education authority are the *council of a county*, the school must have a body of managers consisting of a number of managers not exceeding four appointed by the council of the county, together with a number not exceeding two appointed by the minor local authority.

When the local education authority are the *council of a borough or urban district*, they may appoint for the school a body of managers consisting of such number of managers as they may determine, but they are under no obligation to appoint managers for the school.

As regards the provision that in the case of a school provided by the council of a county as the local education authority, a number of managers not exceeding two shall be appointed by the minor local authority, it will be observed from sec. 24 (2) that the expression "minor local authority" means as respects any school the council of any borough or urban district or the parish council or (where there is no parish council) the parish meeting of any parish which appears by the county council to be served by the school. Where it appears to the county council that the school serves the area of more than one minor local authority, the county council are to make such provision as they think proper for joint appointment of managers by the authorities concerned.

It is not necessary that the managers appointed by the minor authorities should be members of those authorities. The minor authorities are unrestricted in their selection of the persons to be appointed.

For rules as to meetings of parish councils and parish meetings, see Local Government Act, 1894 (56 & 57 Vict., c. 73, 1st Schedule).

With respect to *public elementary schools not provided by a local education authority*, every such school is to have a body of managers, of which a number not exceeding four must be foundation managers. As to the appointment of foundation managers, see sec. 11. In addition to these foundation managers the body of managers is to include a number of managers not exceeding two who are to be appointed—

Where the local education authority are the council of a county, one by the council and one by the minor local authority; and

Where the local education authority are the council of a borough or urban district, both are to be appointed by the council.

As regards the exceptions to the provisions above referred to, *the grouping of schools* under one body of managers must be in accordance with sec. 12 of the Act.

With respect to *an increase of the total number of managers of a school* where the local education authority consider that the circumstances of the school require a larger body of managers than that provided by the section, the Board of Education, in their memorandum as to foundation managers, state as follows: "Under the provisions of sec. 6 (3) (b), the local education authority may increase the total number of managers, the foundation managers and local authority's managers being proportionately increased. In the circumstances to which sec. 6 (2) (b) of the Act applies (*viz.* where the local education authority are the council of a borough or urban district), the number of managers of the two classes respectively might be 6 and 3; but where the local education authority are the council of a county, the number of managers must be increased (if increase is thought desirable) to 8 and 4 respectively, or to some other multiple of 4 and 2. It will probably be found in most cases that 12 is an inconveniently large number of managers. Orders of the Board under sec. 11 of the Act will be so drawn as to meet the case of future increase in the number of managers."

A woman is not disqualified by sex or marriage for being on a body of managers (sec. 23 (b)).

The Act contains no provision as to the period for which managers shall be appointed in the case either of foundation managers (see sec. 11) or of managers appointed by the local education authority or the minor authority. Neither is there any provision as to the tenure of office of managers, except that in the First Schedule, B (5), to the Act, which is to the effect that a manager of a school not provided by the local education authority, appointed by that authority or by the minor local authority, shall be removable by the authority by whom he is appointed, and that any such manager may resign his office.

The managers of a school provided by the local education authority are to deal with such matters relating to the management of the school, and subject to such conditions and restrictions as the local education authority determine (First Schedule, B (4)).

The managers of a school maintained but not provided by the local education authority have all powers of management required for the purpose of carrying out the Act, and, subject to the powers of the local education authority, have the exclusive power of appointing and dismissing teachers (sec. 7 (1) (a) (b) (c), (5), and (7)).

The body of managers appointed for a public elementary school not provided by the local education authority are the managers of that school for the purposes of the Elementary Education Acts and this Act,

and, so far as respects the management of a school as a public elementary school, for the purpose of the trust deed (sec. 11 (6)).

With respect to the obligations devolving on the managers which must be fulfilled if the school is to receive a parliamentary grant, see sec. 7 (4) and the 33 & 34 Vict., c. 75, sec. 7, *post*.

As to the powers of managers to fulfil the conditions required to be fulfilled in order to obtain a parliamentary grant, notwithstanding any provision contained in the instrument regulating the trusts or management of the school, see Third Schedule (7) to this Act and sec. 99 of 33 & 34 Vict., c. 75, *post*.

With regard to the audit of the accounts when managers are entrusted by the local education authority with any receipts or payments of money under the Act, see sec. 18 (5).

Maintenance of Schools.

7.—(1.) The local education authority shall maintain and keep efficient all public elementary schools within their area which are necessary, and have the control of all expenditure required for that purpose, other than expenditure for which, under this Act, provision is to be made by the managers ; (1) but, in the case of a school not provided by them, only so long as the following conditions and provisions are complied with :—

- (a) The managers of the school shall carry out any directions of the local education authority as to the secular instruction to be given in the school, including any directions with respect to the number and educational qualifications of the teachers to be employed for such instruction, and for the dismissal of any teacher on educational grounds, and if the managers fail to carry out any such direction the local education authority shall, in addition to their other powers, have the power themselves to carry out the direction in question as if they were the managers ; but no direction given under this provision shall be such as to interfere with reasonable facilities for religious instruction during school hours ; (2)
- (b) The local education authority shall have power to inspect the school ; (3)
- (c) The consent of the local education authority shall be required to the appointment of teachers, but that consent shall not be withheld except on educational grounds ; and the consent of the authority shall also be required to the dismissal of a teacher unless the dismissal be on grounds

connected with the giving of religious instruction in the school ; (2)

(d) The managers of the school shall provide the school-house free of any charge, except for the teacher's dwelling-house (if any), to the local education authority for use as a public elementary school, and shall, out of funds provided by them, keep the schoolhouse in good repair, and make such alterations and improvements in the buildings as may be reasonably required by the local education authority ; Provided that such damage as the local authority consider to be due to fair wear and tear in the use of any room in the school-house for the purpose of a public elementary school shall be made good by the local education authority. (4)

(e) The managers of the school shall, if the local education authority have no suitable accommodation in schools provided by them, allow that authority to use any room in the schoolhouse out of school hours free of charge for any educational purpose, but this obligation shall not extend to more than three days in the week. (5)

(2.) The managers of a school maintained but not provided by the local education authority, in respect of the use by them of the school furniture out of school hours, and the local education authority in respect of the use by them of any room in the schoolhouse out of school hours, shall be liable to make good any damage caused to the furniture or the room, as the case may be, by reason of that use (other than damage arising from fair wear and tear), and the managers shall take care that, after the use of a room in the schoolhouse by them, the room is left in a proper condition for school purposes. (6)

(3.) If any question arises under this section between the local education authority and the managers of a school not provided by the authority, that question shall be determined by the Board of Education. (7)

(4.) One of the conditions required to be fulfilled by an elementary school in order to obtain a parliamentary grant shall be that it is maintained under and complies with the provisions of this section. (8)

(5.) In public elementary schools maintained but not provided by the local education authority, assistant teachers and pupil teachers may be appointed, if it is thought fit,

without reference to religious creed and denomination, and, in any case in which there are more candidates for the post of pupil teacher than there are places to be filled, the appointment shall be made by the local education authority, and they shall determine the respective qualifications of the candidates by examination or otherwise. (9)

(6.) Religious instruction given in a public elementary school not provided by the local education authority shall, as regards its character, be in accordance with the provisions (if any) of the trust deed relating thereto, and shall be under the control of the managers: Provided that nothing in this sub-section shall affect any provision in a trust deed for reference to the bishop or superior ecclesiastical or other denominational authority so far as such provision gives to the bishop or authority the power of deciding whether the character of the religious instruction is or is not in accordance with the provisions of the trust deed. (10)

(7.) The managers of a school maintained but not provided by the local education authority shall have all powers of management required for the purpose of carrying out this Act, and shall (subject to the powers of the local education authority under this section) have the exclusive power of appointing and dismissing teachers. (11)

(1) With regard to the powers of a local education authority to provide school accommodation in public elementary schools, see 33 & 34 Vict., c. 75, secs. 5, 18, and 19, *post*, and secs. 8, 9, 16, and Third Schedule (6) of the present Act. As to the acquisition of sites for schools, see 33 & 34 Vict., c. 75, sec. 20.

The local education authority are, subject to the conditions in this sub-section, to maintain and keep efficient all public elementary schools within their area which are necessary. See also secs. 18 and 19 of 33 & 34 Vict., c. 75, *post*.

The local education authority may, but are under no obligation to, maintain as a public elementary school any marine school or any school which is part of or is held on the premises of any institution in which children are boarded (sec. 15).

For definition of the term "public elementary school," see secs. 3 and 7 of 33 & 34 Vict., c. 75, *post*. A school, in order to bring it within the terms of the section, must be "necessary." The Board of Education, in the case of a school which has not previously been in receipt of a parliamentary grant, may refuse an application for a grant when the school is in their opinion unnecessary (sec. 98 of 33 & 34 Vict., c. 75, *post*). See also secs. 8 and 9 of the present Act as to the provision of a new school, or the enlargement of a school which in the opinion of the Board of Education is such as to amount to the provision of a new school.

The local education authority are to supply apparatus and everything necessary for the efficiency of the school (sec. 19 of 33 & 34

Vict., c. 75, *post*). As to prizes with the view of maintaining the efficiency of a school, see note on that section. They are, however, to be entitled to use for the purposes of the school any furniture and apparatus belonging to the trustees or managers of any school not provided by them, and in use for the purposes of the school before the "appointed day" under this Act (Second Schedule (14)).

The local education authority are also, subject to the conditions referred to in this sub-section, to have control of all expenditure required for maintaining and keeping efficient public elementary schools, with the exception of the expenditure for which the managers are under the Act to make provision.

The duties thus imposed on the local education authority, however, only continue, in the case of a school not provided by the authority, so long as the conditions and provisions of the section are complied with: and it is to be borne in mind that unless these conditions and provisions are complied with, the conditions required in order that a school may obtain a parliamentary grant will not be fulfilled.

As to the schools which are to be deemed to be provided by the local education authority, see note on sec. 6. In the case of schools not so provided, the expenditure for which under the Act the managers are to make provision, is that required for enabling them to comply with the requirements of par. (d) of this sub-section and of sub-section 2.

(2) When the school is provided by the local education authority the body of managers are to deal with such matters relating to the management of the school, and subject to such conditions and restrictions as the local education authority determine (First Schedule, Division B. (4)). The authority of the local education authority therefore is as regards all matters absolute.

In the case of schools not provided by the local education authority their powers are restricted. They can give such directions as they think fit with regard to the secular instruction to be given in the school, subject to this, that the directions are not to be such as will interfere with reasonable facilities for religious instruction during school hours. This would include directions as to the books which should be used in the school for purposes of secular instruction. They can also give directions with respect to the number and educational qualifications of the teachers to be employed for such instruction. The directions so given, which should be given in a formal way in writing, the managers are required to carry out, and if they fail to do so the local education authority will have the necessary power for carrying out the directions themselves as if they were the managers, and will thus be enabled to supersede the managers in the matter. It will also devolve on the local education authority to determine what salaries or other remuneration shall be assigned to the teachers.

Although the appointment of a teacher will be made by the managers, the consent of the local education authority to the appointment will be required, but that consent is not to be withheld except on educational grounds.

The secretary of the Board of Education said in Committee on the Bill: The local education authority will not have the right to call for evidence of the comparative fitness of candidates for the post of head teacher in a denominational school other than the candidate recommended by the managers. (Parl. Debates (1902), vol. 13, 1075.)

The local education authority can direct the dismissal of a teacher on educational grounds, and the consent of the authority to the dismissal of a teacher by the managers will be required, unless the dismissal is on grounds connected with the giving of religious instruction in the school.

"Educational grounds" would include not only considerations as to the educational qualifications of a teacher, but also misconduct of such a character as affected his qualification to act as a teacher. "Grounds connected with the giving of religious instruction in the school" would appear to refer to religious instruction in connection with the duties of the teacher in the school. The Attorney-General, in Committee on the Bill, said: There might be questions which affected both the religious and the secular side. He took it that habitual drunkenness would affect a man's qualification to impart either secular or religious knowledge. The same might be said with regard to the case of a violent-tempered man. (Parl. Debates (1902), vol. 13, 956.)

It would clearly be *ultra vires* for the managers to impose on a teacher, as a condition of employment, any extraneous duties to be covered by the salary paid by the local education authority.

In any case in which there are more candidates for the post of pupil teacher than there are places to be filled, the local education authority are to make the appointment and to determine the qualifications of the candidates by examination or otherwise.

The local education authority have full control over all expenditure of the managers for which the managers have not themselves under the Act to make provision.

If any question arises between the local education authority and the managers of a school not provided by them as regards their powers in matters above referred to, the question is to be determined by the Board of Education.

With regard to teachers, their tenure of office, salaries, &c., see secs. 35 and 86 of 33 & 34 Vict., c. 75. *post*, and notes on those sections

(3) The local education authority have necessarily the power to inspect a school which is provided by them, and this sub-section confers a similar power in the case of a school not so provided.

The clause does not confer on each individual member of the local education authority, or education committee, a right to claim admission to the school at any time he may think fit; but the right to inspect will be delegated by the authority to such members, officers, or other persons as may be authorized by them to act on their behalf. The Attorney-General said in Committee on the Bill that the authority to enter might be by actual and express delegation, or by the implied course of business.

See also sec. 76 of 33 & 34 Vict., c. 75, *post*, as to inspection of schools not provided by the local education authority by an inspector, not one of His Majesty's Inspectors of schools.

(4) The term "schoolhouse" is defined by sec. 3 of 33 & 34 Vict., c. 75, *post*, as including the teacher's dwelling-house and the playground, if any, and the offices and all premises belonging to or required for a school.

The managers of a school not provided by the local education authority are to provide the schoolhouse, with the exception of the teacher's residence, if any, when it is included in the school premises,

free of any charge to the local education authority for use as a school. If ground rent or other rent is payable for the school premises it will devolve on the managers to pay it. If tithe commutation rent-charge or any taxes are payable in respect of the premises, they also must be provided for by the managers. As regards rates, sec. 3 of 60 Vict., c. 5, *post*, provides that no person shall be assessed or rated to or for any local rate in respect of any land or buildings used exclusively or mainly for the purposes of the schoolrooms, offices, or playground of a voluntary school, except to the extent of any profit derived by the managers of the school from the letting thereof. The effect of the definition of "local rate" is to include within the exemption the rates leviable by overseers and by urban district councils. Among the rates so included are the poor rates, rates levied either separately or by an addition to the poor rate for the expenses of a rural district council, or for expenses under the Burial Acts, rates levied under the Lighting and Watching Act, 1833, and the general district rates levied by urban district councils. Any part of the premises used as a teacher's residence is not exempt from assessment. If any rates become payable in consequence of a profit being obtained by the managers from the letting of the school premises when not in use as a school, it would appear that these rates should be paid by the managers.

When there is a teacher's residence forming part of the premises the local education authority will not be entitled to claim that it shall be used either as a residence for the teacher or otherwise, except on such terms as may be agreed on between them and the managers or trustees. When a teacher occupies a residence rent free, it may be presumed that this is taken into account in fixing the salary of the officer, this salary being payable by the local education authority. If the local education authority agree with the managers for the occupation of the teacher's residence, arrangements should be made as to the payments in respect of ground-rent, rates, and taxes (if any) for that part of the school premises.

The managers of the school are also out of funds provided by them to keep the schoolhouse in good repair, but such damage as the local education authority consider to be due to fair wear and tear in the use of any room in the schoolhouse for the purpose of a public elementary school is to be made good by the local education authority. The Attorney-General, in Committee on the Bill, said: So far as repairs were concerned, the managers should keep the schools in a condition fit for educational purposes. The words included structural repairs. (Parl. Debates (1902), vol. 13, 1110, 1118)

The managers are also to make, at the cost of funds provided by them, such alterations and additions as may be reasonably required by the local education authority. When the authority require that alterations or additions shall be made they should specifically state what are the alterations or additions required, and generally it would be desirable that plans should be prepared by them, showing what are the alterations or additions proposed. The rules issued by the Board of Education to be observed in fitting up and planning public elementary schools (1902, Cd. 1332), which may be obtained of Messrs. Eyre and Spottiswoode, East Harding Street, Fleet Street, E.C., it is desirable should be referred to before determining on any such requirements.

A proposal that the managers should undertake the cost of insurance against fire was negatived in Committee on the Bill.

The funds which will be available to the managers for the purpose of the expenditure for which they have to provide will mainly be donations and subscriptions, endowments, if any (subject to the provisions of sec. 13), payments in respect of the teacher's residence when forming part of the school premises, the part of the school fees apportioned to them under sec. 14 when fees are charged, and also any profit which the managers may derive from letting the schoolhouse for times when it is not required under sub-sec. 1 (*d*) for use as a public elementary school, or under sub-sec. 1 (*e*) for use by the local education authority for other educational purposes.

They can also apply to this purpose any moneys in the hands of the managers at the "appointed day" which are not required to meet outstanding liabilities, and sums received by them from the parliamentary grants in respect of a period prior to the "appointed day." As to the "appointed day," see sec. 27.

The Board of Education, in their letter dated February, 1903 (see Appendix, p. 688), and addressed to the governing bodies of the associations of voluntary schools, state as follows: "Any balances which the old managers may have in hand on the 'appointed day' are held by them in a fiduciary capacity for the purposes of the school as a public elementary school, and should therefore be handed over to their successors, to be used at their discretion for those purposes connected with the school for which provision has to be made by them under the Act. No other application of the money would be permissible without a scheme under the provisions of the Charitable Trusts Acts, which could only be made if the original purposes were no longer available,—if, for instance, the school was closed or transferred to the local authority."

As regards a reference to the Board of Education of questions arising between the managers and the local education authority with respect to the requirements under this sub-section, see sub-sec. 3.

As to school furniture, see sub-sec. 2 and Second Schedule (14).

(5) In country districts especially it has been very usual to arrange for the use of voluntary public elementary schools for evening schools for technical instruction, and as a rule no charge has been made on the authorities under the Technical Instruction Acts by the managers for the use of schools for the purpose referred to. Under this subsection the local education authority, if they have no suitable accommodation in schools provided by them, will have the right, in the case of a school not provided by them, to use, free of charge, any room in the schoolhouse for the purpose referred to or for any other educational purpose, for not more than three days in the week. The right in question is only conferred on the local education authority, and consequently the council of a non-county borough or urban district, when not a local education authority, although they are empowered under sec. 3 to supply or aid the supply of higher education, will have no such right. But in the case of these boroughs and urban districts there will usually be no such difficulty in finding suitable accommodation as would frequently arise, were it not for this provision, in rural areas under the jurisdiction of the council of a county.

The right in the case of a local education authority can only arise where they have no suitable accommodation in schools provided by them.

In this matter also any question arising between the managers and

the local education authority may, on being referred to the Board of Education, be determined by that Board under sub-sec. 3.

With regard to the use of a public elementary school for the purpose of taking a poll in parliamentary elections, and elections of county councillors, guardians, urban and rural district councillors, and parish councillors, for proceedings and meetings in connection with the question of allotments, and for meetings of parish councils and parish meetings in parishes in the district of a rural district council, see notes to sec. 19 of 33 & 34 Vict., c. 75, *post*.

(6) The local education authority are entitled to use for the purpose of the school in the case of a public elementary school not provided by them, any school furniture and apparatus belonging to the trustees or managers of the school and in use for the purposes of the school before the "appointed day" (Second Schedule (14)). As to the "appointed day," see sec. 27.

Any new furniture or additional furniture which may be required for the school it will devolve on the local education authority to supply.

As there will frequently be a joint use of the furniture by the local education authority and the managers, the sub-section provides that the managers shall, in respect of the use by them of the school furniture out of school hours, be liable to make good any damage caused to the furniture by reason of that use other than damage arising from fair wear and tear.

In like manner, the local education authority in respect of the use by them of any room in the schoolhouse out of school hours are to make good any damage caused to the room by reason of that use other than damage arising from fair wear and tear.

As regards the lighting and warming of the rooms, it will devolve on the local education authority to make the requisite arrangements for such times as the school is used by them, and on the managers for such times as they have the use of the rooms.

The managers are responsible for a room in the schoolhouse which has been used by them being left in a proper condition for school purposes.

Any question arising under this sub-section between the local education authority and the managers may be determined by the Board of Education under sub-sec. 3.

(7) The matters covered by the section are so numerous that it is probable that there will be a large number of questions referred to the Board of Education under this sub-section. The convenient course when a question arises which it is desired to submit to the Board to be determined by them would be that a full statement in writing of the facts should be agreed on by both parties, the contention on each side being also stated, and that the Board should give their decision on this statement. When no such statement can be agreed on, each party should state their case in writing. If the Board of Education consider that, before giving their decision, a local inquiry should be held under sec. 23 (10), they can direct an inquiry accordingly, and in that case the provisions of sec. 73 of the 33 & 34 Vict., c. 75, *post*, will apply. When an inquiry is held, the Board can direct by whom the costs of the inquiry shall be paid.

(8) With regard to the conditions which must be fulfilled by an elementary school, in addition to that imposed by this sub-section, in

order to obtain a parliamentary grant, see secs. 7 and 97 of 33 & 34 Vict., c. 75, *post*.

In connection with the conditions which by this sub-section are required to be fulfilled in order that a school may obtain a parliamentary grant, it is to be observed that under the provisions in the Third Schedule (7) to this Act and sec. 99 of 33 & 34 Vict., c. 75, *post*, the managers of every elementary school have power to fulfil the conditions required to be fulfilled in order to obtain a parliamentary grant, notwithstanding any provision contained in any instrument regulating the trusts or management of their school.

(9) In the case of a public elementary school not provided by the local education authority it will be entirely in the discretion of the managers whether, when they appoint assistant teachers or pupil teachers, they will have any regard to the religious creed and denomination of the person proposed to be appointed.

If there are more candidates for the post of pupil teacher than there are places to be filled, the local education authority and not the managers are to make the appointment, and in such cases they may disregard the question of the religious creed or denomination of the candidates, and may determine the respective qualifications of the candidates by examination or otherwise.

This sub-section does not impose on the managers of the school any obligation to make any public notification of a vacancy arising in the post of pupil teacher, but it will be in the power of the local education authority to give directions to the managers on the subject when they deem it desirable.

The secretary of the Board of Education, in Committee on the Bill, said that this provision would open the doors of the teaching profession more widely to nonconformists and persons of all denominations, and place the education authorities in the position to start a scheme for the general organization of the teaching profession.

(10) The religious instruction given in a school not provided by the local education authority is as regards its character to be in accordance with the provisions, if any, of the trust deed relating thereto, and, subject to the proviso, it is to be under the control of the managers.

For definition of the term "trust deed," see sec. 24 (5)

It must, however, be borne in mind that the provisions of sec. 7 of the 33 & 34 Vict., c. 75, *post*, as to religious observances and instruction in religious subjects in schools and the other regulations included in that section must be strictly complied with, or the conditions which are required in order that an elementary school may obtain a parliamentary grant will not be fulfilled.

As regards the proviso, precedents of trust deeds settled for Church of England schools and schools in connection with other religious bodies are given in a Parliamentary Paper [Cd. 1337], 1902.

The following is an extract from a trust deed included amongst the precedents: "In case any difference shall arise between the minister and the curate and the committee of management hereinbefore mentioned respecting the prayers to be used in the school not being the Sunday school or the religious instruction of the scholars attending the same or any regulation connected therewith or the exclusion of any book the use of which in the school may be objected to on religious grounds or the dismissal of any teacher from the school on account of his or her defective or unsound instruction of the children

in religion, the minister or curate or any member of the committee may cause a written statement of the matter in difference to be laid before the bishop of the diocese within which such school shall be situated, a copy thereof having been previously communicated to the committee or minister or curate if they or he shall not have been parties or privy to the making of the statement respectively, and the bishop may inquire concerning and determine the matter in difference, and the decision of the bishop in writing under his hand thereon when laid before the committee shall be final and conclusive in the matter."

The Attorney-General, in Committee on the Bill, said: The only reference to the bishop on my view of the clause will be on any question as to the character of the religious teaching. On every other question—as to the management of the religious teaching, how it is to be given, and by whom—the managers will have full control, and no appeal will lie against their decision. If the managers should infringe the terms of the trust as regards the character of the religious instruction as defined by the deed itself or by the Bishop on reference under the terms of the deed, the proper remedy would be as in the case of any abuse of a charitable trust by an information in the name of the Attorney-General. (Parl. Debates (1902), vol. 15, 847.)

If the trust deeds provide for the reference to the bishop on the question of what is appropriate religious teaching, having reference to the tenets of the denomination, that reference will not be interfered with; but as regards the whole management and control of the giving of religious instruction, how and by whom it is to be given, the effective power of decision rests without appeal with the managers. (Parl. Debates (1902), vol. 15, 1107.)

In public elementary schools provided by the local education authority the provision in sec. 14 of 33 & 34 Vict., c. 75, *post*, that no religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school, must be strictly observed, as well as the several regulations contained in sec. 7 of that Act.

(11) The managers will act as one body with regard to all subjects relating to management.

With respect to the powers of the local education authority under the section as to appointing and dismissing teachers, see sub-secs. 1 (a) and (c) and 5.

Provision of New Schools.

8—(1.) Where the local education authority or any other persons propose to provide a new public elementary school, they shall give public notice of their intention to do so, and the managers of any existing school, or the local education authority (where they are not themselves the persons proposing to provide the school), or any ten ratepayers in the area for which it is proposed to provide the school, may, within three months after the notice is given, appeal to the Board of Education on the ground that the proposed school is not required, or that a school provided by the local education authority, or not so

provided, as the case may be, is better suited to meet the wants of the district than the school proposed to be provided, and any school built in contravention of the decision of the Board of Education on such appeal shall be treated as unnecessary.

(2.) If, in the opinion of the Board of Education, any enlargement of a public elementary school is such as to amount to the provision of a new school, that enlargement shall be so treated for the purposes of this section.

(3.) Any transfer of a public elementary school to or from a local education authority shall for the purposes of this section be treated as the provision of a new school.

For definition of the term "ratepayers," see sec. 3 of 33 & 34 Vict., c. 75, *post*. The appeal by ratepayers must be by not less than ten. This follows the provision in sec. 9 of the 33 & 34 Vict., c. 75 (now repealed), as to appeals by ratepayers against the decision of the Board of Education as to public school accommodation required.

See sec. 98 of that Act as to the refusal of a parliamentary grant in the case of a school which is in the opinion of the Board of Education unnecessary.

Where a building which has been used as a public elementary school is pulled down and a new school building is erected in its place for the purpose of providing for the same area as that for which the original school provided, and for a like number of children, this would not appear to be the provision of a new school within the meaning of the section.

Sec. 9 specifies the considerations to which the Board of Education are to have regard in determining whether a school or such an enlargement as that referred to in sub-sec. 2 is necessary or not. A school for the time being recognized as a public elementary school is not, however, to be considered unnecessary if the number of scholars in average attendance at the school, as computed by the Board of Education, is not less than 30.

Necessity of Schools.

9. The Board of Education shall, without unnecessary delay, determine, in case of dispute, whether a school is necessary or not, and, in so determining, and also in deciding on any appeal as to the provision of a new school, shall have regard to the interest of secular instruction, to the wishes of parents as to the education of their children, and to the economy of the rates; but a school for the time being recognized as a public elementary school shall not be considered unnecessary in which the number of scholars in average attendance, as computed by the Board of Education, is not less than thirty.

This section enables the Board of Education to determine, in the

case of an existing school, whether it is necessary or not, as well as to decide on the appeals referred to in sec. 8.

With respect to the number of scholars in average attendance, see Article 12 of the Day School Code, which defines "an attendance" at school, and Article 14, which provides that the average attendance for any period is found by dividing the total number of attendances during that period by the number of times for which the school has met during such period (Appendix, pp. 634, 635).

Sec. 22, limiting the provision in a public elementary school of instruction under the regulations of the Board of Education to scholars within the age therein referred to, is also to be borne in mind.

Aid Grant.

10.—(1.) In lieu of the grants under the Voluntary Schools Act, 1897, and under section ninety-seven of the Elementary Education Act, 1870, as amended by the Elementary Education Act, 1897, there shall be annually paid to every local education authority, out of moneys provided by Parliament—

- (a) A sum equal to four shillings per scholar; and
- (b) An additional sum of three halfpence per scholar for every complete twopence per scholar by which the amount which would be produced by a penny rate on the area of the authority falls short of ten shillings a scholar; Provided that, in estimating the produce of a penny rate in the area of a local education authority not being a county borough, the rate shall be calculated upon the county rate basis, which, in cases where part only of a parish is situated in the area of the local education authority, shall be apportioned in such manner as the Board of Education think just.

But if in any year the total amount of parliamentary grants payable to a local education authority would make the amount payable out of other sources by that authority on account of their expenses under this Part of this Act less than the amount which would be produced by a rate of threepence in the pound, the parliamentary grants shall be decreased, and the amount payable out of other sources shall be increased by a sum equal in each case to half the difference.

(2.) For the purposes of this section the number of scholars shall be taken to be the number of scholars in average attendance, as computed by the Board of Education, in public elementary schools maintained by the authority.

Under the Voluntary Schools Act, 1897, there was annually paid out of moneys provided by Parliament, for aiding voluntary schools an aid grant, not exceeding in the aggregate five shillings per scholar for the whole number of scholars in those schools. The aid grant was distributed by the Board of Education to such voluntary schools and in such manner and amounts as the Board thought best for the purpose of helping necessitous schools and increasing their efficiency, due regard being had to the maintenance of voluntary subscriptions. When associations of schools were constituted in such manner in such areas and with such governing bodies representative of the managers as were approved by the Board of Education, there was allotted to each association while so approved (a) a share of the aid grant computed according to the number of scholars in the schools of the association at the rate of five shillings per scholar, or when the Board fixed different rates for town and country schools respectively, then at those rates; and (b) a corresponding share of any sum which might be available out of the aid grant after distribution had been made to unassociated schools. By a minute dated 16th of June, 1897, it was provided that a voluntary school, which on the first day of April in any year was situated within the district of the County Council of London, or within a county borough, municipal borough, or other urban district, should be a town school for the purpose of the allotment of the aid grant, and that any school not so situated should be a country school for the same purpose. By the same minute the following rates were fixed for town and country schools respectively: For town schools, the rate of 5s. 9d. per scholar; for country schools, the rate of 3s. 3d. per scholar.

The Elementary Education Act, 1870, by sec. 97, provided as follows: "Where the school board satisfy the Education Department that in any year ending the 29th September the sum required for the purpose of the annual expenses of the school board of any school district, and actually paid to the treasurer of such board by the rating authority, amounted to a sum which would have been raised by a rate of threepence in the pound on the rateable value of such district, and any such rate would have produced less than twenty pounds, or less than seven shillings and sixpence per child of the number of children in average attendance at the public elementary schools provided by such school board, such school board shall be entitled, in addition to the annual parliamentary grant in aid of the public elementary schools provided by them, to such further sum out of moneys provided by Parliament as, when added to the sum actually so paid by the rating authority, would, as the case may be, make up the sum of twenty pounds, or the sum of seven shillings and sixpence for each such child, but no attendance shall be reckoned for the purpose of calculating such average attendance unless it is an attendance as defined in the said minutes."

This enactment was amended by the Elementary Education Act, 1897, which provided that sec. 97 of the Elementary Education Act, 1870, should have effect as if the sum of seven shillings and sixpence therein mentioned were increased by the sum of fourpence for every complete penny by which the school board rate for the year therein mentioned exceeded threepence, provided that the said sum of seven shillings and sixpence should not be thereby increased beyond a maximum of sixteen shillings and sixpence. "School board rate" was defined as meaning the rate in the pound on the rateable value of the district which would have produced the sum required in the

said year for the purpose of the annual expenses of the Board, and actually paid in that year to the treasurer by the rating authority.

The grants under the provisions above referred to will cease from the appointed day prescribed by sec. 27, and in lieu of those grants the aid grant for which this section provides will be paid.

The voluntary schools aid grant amounted last year to £640,000, and the grants under sec. 97 of the Elementary Education Act, 1870, as amended by the Elementary Education Act, 1897, amounted to £220,000, making together £860,000.

The new aid grant provided for by this section it was estimated by the First Lord of the Treasury might amount to £1,300,000 more than the two grants above referred to, which will be superseded.

It will be observed that for the purposes of the grant the number of scholars is to be taken to be the number of scholars in average attendance as computed by the Board of Education in public elementary schools maintained by the local education authority, whether in schools provided by them or in schools not so provided. The Code of the Board of Education provides that "an attendance means attendance at secular instruction (*a*) during one hour and a half in the case of a scholar in a school or class for infants, and (*b*) during two hours in the case of a scholar in a school or class for older children, and during one hour and twenty minutes in the case of a half-time scholar. The attendance of a half-time scholar for less than two consecutive hours is not recognized, but such two consecutive hours are reckoned as an attendance and a half." The "average attendance" for any period is found by dividing the total number of "attendances" made during that period by the number of times for which the school has met during that period (see Articles 12 and 14 of Day School Code in Appendix, pp. 634, 635). In connection with this provision the limit of age of children for whom instruction may be given in a public elementary school which is prescribed by sec. 22 (2) of this Act is to be borne in mind.

In estimating the produce of a penny rate in the area of a local education authority not being a county borough, the rate is to be calculated on the county rate basis. This basis is adopted, as it is the basis of a rate levied by one authority throughout the county, and is assumed to give the total values of the properties in the different parishes more accurately than is sometimes the case as regards the valuation lists approved by the assessment committees of the different unions. There are cases, although they are very exceptional, where part only of a parish is situated in the area of the local education authority. In these cases the rate is to be apportioned in such manner as the Board of Education think just.

The produce of the penny rate is to be estimated not on the full rateable value but on the assessable value, *i.e.* the rateable value less one half of the rateable value of agricultural land (First Lord of the Treasury, Parl. Debates [1902], vol. 14, 882).

In estimating what a rate at a certain rate in the pound will produce, it is necessary to have regard to the proportion of the rate which will not be collected, in consequence of properties included in the rate being unoccupied during part of the time for which the rate is made, excusals on the ground of poverty, the allowances to owners who, under the Poor Rate Assessment and Collection Act, 1869, pay the rates instead of the occupiers, or for other reasons, are irrecoverable. It is for this reason that it is provided by sec. 23 (4) that the

amount which would be produced by any rate in the pound shall be estimated for the purposes of the Act in accordance with regulations made by the Local Government Board.

Subject to the conditions above referred to and to the exception provided for in the concluding paragraph of the sub-section, the aid grant will be—

- (a) A sum equal to four shillings per scholar, and
- (b) An additional sum of three halfpence per scholar for every complete twopence per scholar by which the amount which would be produced by a penny rate on the area of the authority falls short of ten shillings a scholar.

As regards the exception above referred to it will be remembered that the parliamentary grants are the annual grant (including the grant for higher public elementary schools) referred to in secs. 96 and 97 of 33 & 34 Vict., c. 75, *post*, the fee grants payable under 54 & 55 Vict., c. 56, *post*, the additional grants payable in the case of districts with small population under sec. 19 of the 39 & 40 Vict., c. 79, and sec. 2 of the 53 & 54 Vict., c. 22, the grants payable under sec. 12 of the 56 & 57 Vict., c. 42, *post*, in respect of children in schools for blind and deaf children, and the grants payable under the 62 & 63 Vict., c. 32, *post*, for defective children in day schools and classes or in certified schools for boarding and lodging defective children and for epileptic children in certified schools for epileptic children.

The payments made to a local education authority under the Agricultural Rates Acts are not a parliamentary grant for the purposes of this section.

This sub-section is to meet the case where the total amount of parliamentary grants payable to a local education authority would make the amount payable out of other sources by that authority under this part of the Act (*i.e.* the part relating to elementary education) less than the amount which would be produced by a rate of threepence in the pound, that amount being estimated as stated above in accordance with the regulations which will be made by the Local Government Board. In that case the parliamentary grants are to be decreased and the amount payable out of other sources to be increased by a sum equal in each case to half the difference.

The loan expenses chargeable to present school board areas will be included in the total expenses of the local education authority for calculating the aid grant payable to the authority (First Lord of the Treasury, Parl. Debates [1902], vol. 14, 1034).

Foundation Managers.

11.—(1.) The foundation managers of a school shall be managers appointed under the provisions of the trust deed of the school, but if it is shown to the satisfaction of the Board of Education that the provisions of the trust deed as to the appointment of managers are in any respect inconsistent with the provisions of this Act, or insufficient or inapplicable for the purpose, or that there is no such trust deed available, the Board of Education shall make an

order under this section for the purpose of meeting the case. (1)

(2.) Any such order may be made on the application of the existing owners, trustees, or managers of the school, made within a period of three months after the passing of this Act, and after that period on the application of the local education authority or any other person interested in the management of the school, and any such order, where it modifies the trust deed, shall have effect as part of the trust deed, and where there is no trust deed shall have effect as if it were contained in a trust deed. (2)

(3.) Notice of any such application, together with a copy of the draft final order proposed to be made thereon, shall be given by the Board of Education to the local education authority and the existing owners, trustees, and managers, and any other persons who appear to the Board of Education to be interested, and the final order shall not be made until six weeks after notice has been so given. (3)

(4.) In making an order under this section with regard to any school, the Board of Education shall have regard to the ownership of the school building, and to the principles on which the education given in the school has been conducted in the past. (4)

(5.) The Board of Education may, if they think that the circumstances of the case require it, make any interim order on any application under this section to have temporary effect until the final order is made. (5)

(6.) The body of managers appointed under this Act for a public elementary school not provided by the local education authority shall be the managers of that school both for the purposes of the Elementary Education Acts, 1870 to 1900, and this Act, and, so far as respects the management of the school as a public elementary school, for the purpose of the trust deed. (6)

(7.) Where the receipt by a school, or the trustees or managers of a school, of any endowment or other benefit is, at the time of the passing of this Act, dependent on any qualification of the managers, the qualification of the foundation managers only shall, in case of question, be regarded. (7)

(8.) The Board of Education may, on the application of the managers of the school, the local education authority, or any person appearing to them to be interested in the school, revoke, vary, or amend any order made under this section by an order made in a similar manner ; (8) but before

making any such order the draft thereof shall, as soon as may be, be laid before each House of Parliament, and, if within thirty days, being days on which Parliament has sat, after the draft has been so laid before Parliament, either House resolves that the draft, or any part thereof, should not be proceeded with, no further proceedings shall be taken thereon, without prejudice to the making of any new draft order. (9)

(1) The following notes, when given as quotations, are extracts from a memorandum of the Board of Education dated the 27th December, 1902. (See Appendix, p. 678.)

As to the appointment of managers of public elementary schools not provided by the local education authority, see sec. 6 (2).

"Every voluntary public elementary school will henceforth be managed by a body normally consisting of six persons, of whom four will be 'foundation managers' representing the interests of those by whom the school was established or is at present managed. The remaining two managers will be representative of local authorities. The 'foundation managers' will, although appointed in a different manner, act together with the two other managers for the purpose of conducting a public elementary school, and with them will compose the body which is spoken of in the Act as 'the managers of the school.'"

This is, however, subject to the provisions in sec. 6 (3), under which the number of managers specified above may be increased by the local education authority when they consider that the circumstances of any school require that the number should be so increased; but in that case the number of each class of managers must be proportionately increased. See notes on secs. 6 (3) (a) and 12 as to the grouping of schools under one body of managers.

The Board of Education state that orders of the Board under sec. 11 will be so drawn as to meet the case of future increase in the number of managers.

The section requires that the foundation managers of a school shall be managers appointed under the provisions of the trust deed of the school, unless it is shown to the satisfaction of the Board of Education that the provisions of the trust deed as to the appointment of managers are in any respect inconsistent with the provisions of this Act or insufficient or inapplicable for the purpose, or that there is no trust deed available.

The expression "trust deed" includes "any instrument regulating the trusts or management of a school."

"For the purposes of the Act therefore the term 'trust deed' includes not only deeds in the ordinary sense, but also any of the following instruments if they provide for the appointment of trustees or give directions for the management of a school or its endowment, viz. :—

- (i.) Orders of the Court of Chancery ;
- (ii.) Orders of a County Court under the Charitable Trusts Acts, 1853 and 1860 ;
- (iii.) Orders of the Charity Commissioners ;
- (iv.) Schemes made under the Endowed Schools Acts ;
- (v.) Schemes made by the Education Department under sec. 75 of the Elementary Education Act of 1870 ;

(vi.) In the case of privately-owned schools, a lease or agreement in writing by which a school is let to managers for the purposes of a school may be usually regarded as a trust deed, and any trust declared therein attaches to the whole of the tenants' interest whatever it may be."

"It is apprehended that when there is a trust deed an order will usually be required in the following cases :—

- (a) Where the trust deed contemplates a number of managers either greater or less than four.
- (b) Where the trust deed gives (1) no directions as to the appointment of managers, or (2) such directions as cannot be fulfilled, and—
- (c) Where by reason of changes in local or other circumstances, the trust deed has become inapplicable for the purposes of the management of the school, or a strict adherence to the letter of the deed would defeat its intention."

Where, however, the school has a trust deed, "and the deed permits of the appointment of four foundation managers and gives sufficient and practicable directions as to the manner of their appointment, the intervention of the Board of Education will not usually be required, and the present managers will only have to see that four such managers are properly appointed to act with the two other managers."

When this is not the case, the proper course for the owners or trustees or managers is to apply to the Board of Education for an order under this section for the purpose of meeting the case.

As to applications for an order, see notes on sub-sec. (2).

"In cases *where an order is required to adapt the provisions of the deed to the new conditions of management created by the Act*, and where the trust deed departs from the usual type or contains unusual provisions as to the management of the school, it is desirable that special recommendations should be made by the applicant as to the provisions to be embodied in the order. In other cases recommendations may conveniently be made (in the case of denominational schools) in or by reference to one of the forms adopted by the National Society, or associations of Church of England, Roman Catholic, Wesleyan, or other schools. It is desirable that where schools have trust deeds of a similar type, uniformity in the provisions relating to the appointment of foundation managers should be secured, as far as is possible consistently with due regard to the trust deed and local circumstances."

"In cases of doubt or difficulty *where the trust deed is defective or insufficient in any particulars*, the trustees should not attempt to supplement it by a new deed, but should apply for direction to the Board of Education (exercising the powers formerly belonging to the Charity Commissioners in respect of purely educational endowments)."

The defects in a deed may usually be cured by an order under this section. "Where this is not possible it is open to the trustees to apply to the Board of Education for a scheme, but no schemes will be made at present unless it is clearly shown that an order would be insufficient to secure the proper management of the school."

"Where *there is no trust deed and the school is not claimed as private property, but is held on implied trusts (i.e. such as may be presumed from usage)*, it is undesirable that the persons now managing the school should attempt to make a trust deed; they should either

apply to the Board of Education for an order under this section, or, in case of doubt or difficulty as to their rights and duties, for direction under the Charitable Trusts Acts."

"An order under this section will be required in all cases *where there is no trust deed or where the trust deed is not available*. Where a trust deed is known to have existed, every effort should be made to discover it. Where the trust deed cannot be found, particulars should be given in the application form of any draft, abstract, or other documents from which the trusts of the school may be collected."

"Where *no trust deed is known to have existed*, it is important that full particulars of the usage which has prevailed in the management of the school at different periods should be supplied. The direction contained in sub-sec. (4) that the Board 'shall have regard to . . . the principles on which the education given in the school has been conducted in the past, is specially applicable to such cases."

"Where *school premises are held by lease or agreement from a private owner*, it is not open to the owner, pending the term of the tenancy, to modify the trusts on which the premises are held. In such cases, if the conditions of letting do not allow of the appointment of the number of foundation managers required by the Act, it is the duty of the owner or the managers to apply to the Board of Education for an order under this section."

"Where *school premises are the property and in the possession of a private owner free from any trust*, express or implied, for educational purposes, several courses are open to him.

- (i.) He may retain them in his own hands and as his absolute property, permitting them to be used by managers appointed by himself. In this case, as there is no trust deed, he will have to apply to the Board of Education for an order appointing foundation managers. This course is perhaps the least convenient.
- (ii.) He may execute a declaration of trust making himself, either alone or jointly with others, trustee of the school, either in perpetuity or for a fixed period.
- (iii.) He may convey the school to trustees in perpetuity.
- (iv.) He may let the school to managers by lease or agreement for a term of years, or from year to year, at a nominal or a substantial rent. This rent must now be paid by the managers out of funds other than those provided by the local education authority, and must not be charged in the school accounts."

"In the second, third, and fourth cases above-mentioned he may insert in the trust deed, lease, or agreement, such provisions as to management and mode of appointing managers as he thinks fit. If these provisions are consistent with and sufficient for the purposes of the Act, no order under this section will be required. It is obviously desirable that in any case he should act under competent legal advice, and the Board of Education cannot undertake to advise an owner as to the manner in which he should carry out his intention."

"It may be noted that if the owner lets the school to a local education authority it becomes a 'provided' school subject to the 'Cowper-Temple clause,' and all the other provisions of the Act applicable to such schools will attach to it. The relations between the owner and the local authority will be merely those of landlord and tenant."

In the foregoing observations, it is assumed that it is intended to

carry on the school in accordance with the trusts, except in so far as those trusts are modified by the Act.

As to the closing of schools, the Board of Education state, "It is to be remembered that (except in the case of such privately-owned schools as are the absolute property of the owner, and are subject to no trusts whatsoever) managers and trustees of elementary schools usually hold the school premises upon trust, either themselves to carry on a school therein or to permit it to be carried on. It is therefore not open to either body, or even to both bodies acting together, to close the school as or when they please. An attempt to close the school capriciously or for insufficient reasons may involve the consequences attendant on a breach of trust. If trustees or managers are unable or unwilling to carry on the school it is their duty at once to apply to the Board of Education (who for this purpose may exercise the powers formerly possessed by the Charity Commissioners) to be relieved of their trust or for direction in the matter."

It will be observed from sub-sec. 2 that where an order is made under this section modifying the trust deed, it will have effect as part of the trust deed, and that where there is no trust deed, the order will have effect as if it were contained in a trust deed.

With regard to applications to the Board of Education for orders under this section, see notes on sub-sec. (2).

(2) An order under the foregoing provisions, with respect to a trust deed, may be made on the application of "the existing owners, trustees, or managers of a school," made within three months from the date of the passing of the Act (the 18th December, 1902).

"The trustees are those persons in whom the property in the school premises is now vested. These persons may also be entitled to act as managers, but in the case of most elementary schools the two bodies are distinct. For the purposes of the Act it is indifferent whether the application is made by the trustees or by the managers, but in any case the application should be signed by a majority of the body which applies. It is also obviously desirable that before applying the managers and trustees should consult one another, and also the owner if there is one."

The Board of Education have prepared forms of application for orders under this section, to meet the cases (*a*) where there is a trust deed or other written instrument declaring the trusts, and (*b*) where there is no trust deed or other instrument declaring the trusts. The particulars required in each case are set forth in detail in the forms. Copies of the forms will be supplied free of cost on application to the Board.

Any failure to make, or delay in making, application for an order where an order is necessary, may result in serious embarrassment and inconvenience to the district served by the school. The information required to be furnished in the form of application should be given fully under the several heads. Any failure to supply the information required may lead to considerable delay in dealing with the case.

"Applications should be either sent directly to the Secretary, Board of Education, Whitehall, or transmitted through the Secretary of any Voluntary School Association to which the school may belong. The latter course is perhaps the most convenient, in order that the applications may reach the Board in batches corresponding to geographical or administrative divisions, and that time may be saved in dealing with them."

As to the notice to be given by the Board of Education of any such application, see sub-sec. (3).

The form of application should be filled up in duplicate. One copy should be sent to the Board of Education, and the second copy should be retained by the correspondent as a source from which information, similar to that in the possession of the Board, may be readily obtained by persons interested in the matter.

If the owners or trustees or managers do not think fit to apply to the Board of Education for an order under the section, when such an order is required, within three months from the passing of the Act, the local education authority, or any other person interested in the management of the school, may after that period make application for the order.

(3) This sub-section refers to the notice to be given by the Board of Education of any application for an order under the section, and the furnishing by them of copies of "the draft final order" proposed to be made thereon.

The sub-section does not require that copies of an interim order under sub-sec. (5), which is to have temporary effect until the final order is made, shall be furnished.

In ordinary cases, the notices and draft final orders, which are required to be given to the local education authority, and the existing owners, trustees, and managers, "will also be sent by the Board of Education to the parish council or parish meeting, or other minor local authority of the area in which the school is situated as representing 'other persons interested.'"

(4) The provision that the Board of Education in making an order under the section shall have regard to the principles on which the education given in the school has been conducted in the past is specially applicable to cases where no trust deed is known to have existed. Amongst other particulars in connection with an application for an order under this section which the Board of Education require to be furnished in a case where there is no trust deed, or other instrument declaring the trust are the following:—(a) Whether the school has been united with the National Society, or any other society, and if so, at what date and on what conditions; (b) the usage which has prevailed during at least the last twenty years as regards religious instruction, *e.g.* (1) whether religious instruction has been given in accordance with the principles of the Church of England or any other denomination, (2) whether it has been superintended by the minister or any other person *ex-officio*; and (c) any special usage affecting the character of the school. The names of societies who have contributed £10 and upwards in one sum are also required to be stated.

(5) The Board of Education state, "It is probable that most orders under this section will, in the first instance, be made in the form of 'interim orders,' which will not be confirmed until the local education authorities have had time to make preparation for the proper consideration of the notices and draft final orders, which, under the section, will be sent to them as well as to the owners, trustees, and managers." See also notes on sub-sec. (3).

(6) See also sec. 7 (7), which provides that the managers of a school maintained but not provided by the local education authority shall have all powers of management required for the purpose of carrying

out the Act, and shall (subject to the powers of the local education authority under that section) have the exclusive power of appointing and dismissing teachers. The managers will act as one body.

(7) The object of this clause is to provide that where a school is entitled to an endowment or some other benefit so long as the managers are of a particular denomination, that school shall not be deprived of the endowment or benefit if the foundation managers are of the necessary religious denomination, by reason of the fact that the representative of the local authority, or the minor local authority, is a Nonconformist or of some religious denomination other than that to which the endowment or the benefit applied.

(8) It will be observed from the form of Interim Order (see p. 691) that it is proposed—

1. That the first foundation managers shall consist of four persons appointed by the persons who at the date of the Order are *de facto* managers of the school, that is to say, managers as defined by sec. 3 of the Elementary Education Act, 1870 (sec p. 202), provided that if the principal officiating minister of the ecclesiastical parish or district in which the school is situated is a manager of the school *ex officio*, he shall be one of the said four persons.
2. That any disputes as to the right of any person to appoint the first foundation managers under the terms of the Order, or to act as one of the first foundation managers *ex officio*, shall be referred to and determined by the Board of Education.

(9) In calculating the thirty days from the date of laying the draft before each House of Parliament, it would appear that the thirty days may include any day when there has been a sitting either of both Houses, or of one only.

Grouping of Schools under One Management.

12.—(1.) The local education authority may group under one body of managers any public elementary schools provided by them, and may also, with the consent of the managers of the schools, group under one body of managers any such schools not so provided.

(2.) The body of managers of grouped schools shall consist of such number and be appointed in such manner and proportion as, in the case of schools provided by the local education authority, may be determined by that authority, and in the case of schools not so provided, may be agreed upon between the bodies of managers of the schools concerned and the local education authority, or in default of agreement may be determined by the Board of Education.

(3.) Where the local education authority are the council of a county, they shall make provision for the due representation of minor local authorities on the bodies of managers of schools grouped under their direction.

(4.) Any arrangement for grouping schools not provided by the local education authority shall, unless previously determined by consent of the parties concerned, remain in force for a period of three years.

This section contemplates that where there is a grouping of public elementary schools under one body of managers there shall be separate groupings of schools provided by the local education authority and of schools not so provided. In the latter case the grouping can only be carried out with the consent of the managers of the schools. The managers referred to are the managers under the Act, and it will therefore be necessary, although grouping may be contemplated, that managers should in the first instance be appointed for each school proposed to be grouped.

As to the minor local authorities, see sec. 24 (2).

Endowments.

13.—(1.) Nothing in this Act shall affect any endowment, or the discretion of any trustees in respect thereof: Provided that, where under the trusts or other provisions affecting any endowment the income thereof must be applied in whole or in part for those purposes of a public elementary school for which provision is to be made by the local education authority, the whole of the income or the part thereof, as the case may be, shall be paid to that authority, and, in case part only of such income must be so applied and there is no provision under the said trusts or provisions for determining the amount which represents that part, that amount shall be determined, in case of difference between the parties concerned, by the Board of Education; but if a public inquiry is demanded by the local education authority, the decision of the Board of Education shall not be given until after such an inquiry, of which ten days' previous notice shall be given to the local education authority and to the minor local authority and to the trustees, shall have been first held by the Board of Education at the cost of the local education authority. (1)

(2.) Any money arising from an endowment, and paid to a county council for those purposes of a public elementary school for which provision is to be made by the council, shall be credited by the council in aid of the rate levied for the purposes of this Part of this Act in the parish or parishes which in the opinion of the council are served by the school for the purposes of which the sum is paid, or, if the council so direct, shall be paid to the overseers of the parish or parishes in the proportions directed by the

council, and applied by the overseers in aid of the poor rate levied in the parish. (2)

(1) In the case of a school provided by the local education authority, as that authority would make provision for all purposes, there would not appear to be any question as to the income from the endowment in respect of the school being payable to the local education authority.

Where in the case of a school not provided by the local education authority the income of an endowment must necessarily under the trusts or other provisions affecting the endowment be applied wholly to the purposes of a public elementary school for which provision is to be made by the local education authority the whole of the income must be paid to that authority. But the endowment may be partly for purposes for which the local education authority are not empowered to make provision—such as keeping the schoolhouse in good repair, and making alterations and improvements in the buildings. In such cases where there is no provision under the trusts or other provisions affecting the endowment, for determining the amount which represents such part, the amount is to be determined in case of difference by the Board of Education.

Trust deeds are often expressed in vague and general terms, giving no clear direction which would require the application of the income of the endowment to one or other of the purposes above mentioned, and sometimes there are no written trusts.

In cases of difference of opinion or doubt, trustees might apply to the Board of Education for direction in the matter, and, if they act upon such direction, they are completely protected against personal liability.

See memorandum issued by the Board of Education as to endowments, dated 16th February, 1903, in Appendix, p. 685.

The local education authority may demand that before the decision of the Board of Education is given a public inquiry shall be held, but neither the trustees of the endowment nor the managers of the school to which the endowment applies nor any other persons have a similar right.

For definition of the term "minor local authorities." see sec. 24 (2)

As regards the public inquiry, see sec. 23 (10) of the Act.

(2) This provision applies only to moneys arising from an endowment, and paid to the council of a county for the purposes of a public elementary school for which provision is made by the council.

There is no similar provision in the case of county boroughs, non-county boroughs and urban districts. In those cases, the whole borough or district and not particular parishes will have the benefit of the moneys arising from the endowment which may be paid to the council.

Apportionment of School Fees.

14. Where before the passing of this Act fees have been charged in any public elementary school not provided by the local education authority, that authority shall, while they continue to allow fees to be charged in respect of that school, pay such proportion of those fees as may be

agreed upon, or, in default of agreement, determined by the Board of Education, to the managers.

It appears from the terms of this section that it is in the discretion of the local education authority whether or not fees shall continue to be charged in a public elementary school not provided by them.

The fees referred to in the section are the fees which are received in the case of a public elementary school for which the managers have not accepted the fee grant, or the fees which, when the grant is received, may be charged under sec. 2 (2) or sec. 4 (1) of the Elementary Education Act, 1891 (54 & 55 Vict. c. 56), *post*.

It will be borne in mind that the duty of the local education authority to provide a sufficient amount of public school accommodation includes the duty to provide a sufficient amount of public school accommodation without payment of fees in every part of their area.

As to the payment of school fees by guardians in the case of pauper children, see 39 & 40 Vict., c. 79, sec. 40, and 43 & 44 Vict., c. 23, sec. 5, *post*, and in the case of non-pauper children, see 39 & 40 Vict., c. 79, secs. 10 and 35, *post*.

Schools attached to Institutions.

15. The local education authority may maintain as a public elementary school under the provisions of this Act, but shall not be required so to maintain, any Marine school, or any school which is part of, or is held in the premises of, any institution in which children are boarded, but their refusal to maintain such a school shall not render the school incapable of receiving a parliamentary grant, nor shall the school, if not so maintained, be subject to the provisions of this Act as to the appointment of managers, or as to control by the local education authority.

There are certain schools, few in number, connected with institutions in which children are boarded as well as instructed, which have been recognized by the Board of Education as public elementary schools, the schools being attended wholly or mainly by children boarded in the institution. The children in these institutions are usually of a destitute class and brought together from other districts. In the case of these schools as well as the marine schools, of which there are but five or six, it will be entirely optional with the local education authorities whether or not they will undertake to maintain them. If they refuse to do so, the schools will continue under their present management and be outside any jurisdiction of the local education authority, but this will not preclude the schools from obtaining parliamentary grants.

Power to enforce Duties under Elementary Education Acts.

16. If the local education authority fail to fulfil any of their duties under the Elementary Education Acts, 1870

to 1900, or this Act, or fail to provide such additional public school accommodation within the meaning of the Elementary Education Act, 1870, as is, in the opinion of the Board of Education, necessary in any part of their area, the Board of Education may, after holding a public inquiry, make such order as they think necessary or proper for the purpose of compelling the authority to fulfil their duty, and any such order may be enforced by mandamus.

The Board of Education were empowered under the Elementary Education Acts to declare a school board in default.

A school board might be declared to be "in default"—

- (1.) If the school board failed to comply within a period of twelve months with the requisition sent by the Board of Education on the formation of the school board, requiring them to supply the public school accommodation specified in the requisition.
- (2.) If when the Board of Education sent the school board a requisition requiring them to fulfil their duty as regards keeping efficient the schools provided by them, or supplying additional public school accommodation, they failed to comply with the requisition within the time specified by the Board of Education.
- (3.) If the school board permitted any act in contravention of, or failed to comply with the regulations prescribed by the Elementary Education Act, 1870, with regard to schools provided by the board.
- (4.) If the school board failed to perform their duty as a local authority under the Elementary Education Act, 1876.
- (5.) If the school board failed to make bye-laws for their district with regard to the attendance of children at school.

When the Board of Education had declared a school board to be "in default," they were empowered to appoint any number of persons, not less than five nor more than fifteen, to be members of the school board; and on such appointment the persons who were previously members of the board were to be deemed to have vacated their offices. The members thus appointed might be remunerated for their services out of the school fund.

It was further provided that if in the opinion of the Board of Education the school board were in default, or were not properly performing their duties, they might direct that the then existing members of the board should cease to hold office, and might order a new election for supplying the vacancies.

Such remedies as those above referred to obviously could not be applied to county councils and the councils of boroughs and urban districts who are local education authorities.

The procedure under the section will be that when the local education authority fail to fulfil any of their duties under the Elementary Education Acts, or fail to provide such additional public school accommodation as is in the opinion of the Board of Education necessary, the Board will make such order as they think necessary or proper for the purpose of compelling the authority to fulfil their duty, and, unless the order is complied with, take the necessary steps for enforcing it by mandamus.

The case of *R. v. The Guardians of the Keighley Union* may be referred to as showing the procedure where a board of guardians refused to comply with regulations issued by the Local Government Board. In that case it appeared that the guardians had refused to comply with the regulations made by the Local Government Board under the Vaccination Acts, and direct the vaccination officer of the union to institute and conduct proceedings against persons who had neglected to cause their children to be vaccinated according to the provisions of the Acts referred to. A rule *nisi* was obtained on the 6th of May, 1875, for a *mandamus* commanding the guardians to give the necessary directions to the vaccination officer, and subsequently the rule was made absolute. To that writ six of the guardians made a return that they were desirous of obeying the writ, but, being in a minority on the board of guardians, were unable to pass the necessary resolution ; and the majority of the board of guardians made a return, in effect excusing themselves from obedience on the ground of their objection to vaccination. This return was demurred to and judgment was given for the Crown, and a peremptory writ of *mandamus* was issued against the board of guardians in the same terms of command as in the first writ. On the 20th February, 1876, a resolution was passed by the guardians in obedience to the peremptory writ, giving the necessary instructions to the vaccination officer, and this resolution of obedience was returned. On the 3rd of May following, however, the guardians resolved "that the board rescinds all portions of resolutions which have or can be construed into a general order to prosecute, and that instructions be given to the vaccination officer that the board reserves to itself the dispensation of the Vaccination Acts." Under these circumstances, a rule *nisi* was obtained against eight of the guardians of the union, they being the guardians who had voted in favour of the last-mentioned resolution, to show cause why an attachment should not issue for contempt of court. On the 3rd of July, 1876, on cause shown, the rule was made absolute against all the defendants, with the exception of one, who, it appeared, was not a member of the board of guardians until the 12th of April, 1876, and when he voted for the resolution rescinding that which was the return to the writ, was not aware of the terms of the *mandamus*, and finally a writ of attachment was issued. The defendants were arrested on the 7th of August, 1876, and were imprisoned at York Castle. They were imprisoned for about a month, and as, during their incarceration, the other members of the board passed a resolution to restore the instructions to the vaccination officer to the state in which they were when the guardians made their return of obedience, the defendants were released from prison on their own recognizances of 1000*l.* each and one surety until the sheriff surrendered them to the custody of the court. They were brought before the court on the 9th November, 1876, when it appeared that the defendants had pledged themselves that they would not be parties to any resolution which would rescind the resolution that had then been passed in obedience to the *mandamus*, and the Solicitor-General having stated that the Local Government Board were content that the defendants should go out on their own recognizances to come up for judgment when called upon, and each of the defendants having agreed to be bound by his recognizance in 1000*l.* to come up for sentence if he disobeyed the law, the defendants were discharged from custody.

The Lord Chief Justice (Cockburn), when the rule for an attachment was made absolute, said : " There seems to be a mistaken notion that,

when the Legislature by Parliament has enacted the law, it is still competent to persons who doubt or dispute the policy of that law to discuss whether it shall be put into execution or not. Now that is a state of things which is quite incompatible with the constitution and the law of this country. If Parliament has passed an Act, that Act is binding on every one. Persons who dispute the policy of such legislative enactments do their best, and they are justified in doing their best, to obtain a repeal or alteration of the law ; but, as long as the law remains, and until it is repealed, it must be obeyed by every one indiscriminately, and if it is not obeyed, it is the business of courts of justice, and our business, to enforce it by punishment of those who break it."

PART IV.

GENERAL.

Education Committees.

17.—(1.) Any council having powers under this Act shall establish an education committee or education committees, constituted in accordance with a scheme made by the council and approved by the Board of Education: Provided that if a council having powers under Part II. only of this Act determine that an education committee is unnecessary in their case, it shall not be obligatory on them to establish such a committee. (1)

(2.) All matters relating to the exercise by the council of their powers under this Act, except the power of raising a rate or borrowing money, shall stand referred to the education committee, and the council, before exercising any such powers, shall, unless in their opinion the matter is urgent, receive and consider the report of the education committee with respect to the matter in question. The council may also delegate to the education committee, with or without any restrictions or conditions as they think fit, any of their powers under this Act, except the power of raising a rate or borrowing money. (2)

(3.) Every such scheme shall provide—

(a) For the appointment by the council of at least a majority of the committee, and the persons so appointed shall be persons who are members of the council, unless, in the case of a county, the council shall otherwise determine ;

(b) For the appointment by the council, on the nomination or recommendation, where it appears desirable, of other bodies (including associations

of voluntary schools), of persons of experience in education, and of persons acquainted with the needs of the various kinds of schools in the area for which the council acts;

(c) For the inclusion of women as well as men among members of the committee;

(d) For the appointment, if desirable, of members of school boards existing at the time of the passing of this Act as members of the first committee. (3)

(4.) Any person shall be disqualified for being a member of an education committee, who, by reason of holding an office or place of profit, or having any share or interest in a contract or employment, is disqualified for being a member of the council appointing the education committee, but no such disqualification shall apply to a person by reason only of his holding office in a school or college aided, provided, or maintained by the council. (4)

(5.) Any such scheme may, for all or any purposes of this Act, provide for the constitution of a separate education committee for any area within a county, or for a joint education committee for any area formed by a combination of counties, boroughs, or urban districts, or of parts thereof. In the case of any such joint committee, it shall suffice that a majority of the members are appointed by the councils of any of the counties, boroughs, or districts out of which or parts of which the area is formed. (5)

(6.) Before approving a scheme, the Board of Education shall take such measures as shall appear expedient for the purpose of giving publicity to the provisions of the proposed scheme, and, before approving any scheme which provides for the appointment of more than one education committee, shall satisfy themselves that due regard is paid to the importance of the general co-ordination of all forms of education. (6)

(7.) If a scheme under this section has not been made by a council and approved by the Board of Education within twelve months after the passing of this Act, that Board may, subject to the provisions of this Act, make a provisional order for the purposes for which a scheme might have been made. (7)

(8.) Any scheme for establishing an education committee of the council of any county or county borough in Wales or of the county of Monmouth or county borough of Newport shall provide that the county governing body constituted under the Welsh Intermediate Education Act,

1889, for any such county or county borough shall cease to exist, and shall make such provision as appears necessary or expedient for the transfer of the powers, duties, property, and liabilities of any such body to the local education authority under this Act, and for making the provisions of this section applicable to the exercise by the local education authority of the powers so transferred. (8)

(1) Under this section the council of every county and of every county borough and also the council of every non-county borough with a population of over 10,000 and of every urban district with a population of over 20,000 are required to establish an education committee or education committees constituted in accordance with a scheme made by the council and approved by the Board of Education, except when the council of a non-county borough or district under the powers conferred by sec. 20 (*b*) relinquish in favour of the council of the county their powers as to elementary education.

The population is to be calculated in the case of non-county boroughs and urban districts according to the census of 1901 (sec. 23, (8)). For non-county boroughs with a population of over 10,000 and urban districts with a population of over 20,000, see note to sec. 1, *ante*.

The councils who have powers under Part II. only of the Act are the councils of non-county boroughs or urban districts who have no powers under Part III., but who, under sec. 3, are empowered to expend money, for the purpose of supplying or aiding the supply of education other than elementary, and in these cases it is not obligatory on them to establish an education committee if they determine that such a committee is unnecessary.

As to schemes for the establishment of education committees, see notes to sub-secs. 3-8.

As to grounds of objection to a scheme, see note to sub-sec. 6.

(2) When an education committee has been established, every matter relating to the exercise by the council of their powers under the Act, except the power of raising a rate or borrowing money, is to stand referred to the education committee, and the council before exercising any of their powers are, unless they consider that the matter is urgent, to receive and consider the report of the education committee with respect to the matter in question.

The council have also the widest power as regards delegation of their powers to the education committee, except those with respect to the raising of a rate or the borrowing of money. Any of their powers with the exceptions referred to may be delegated to the education committee with or without any restrictions or conditions as they think fit.

A memorandum issued by the Board of Education, which refers to certain powers and duties of county councils (see Appendix, p. 668), summarises the position of the council with regard to the education committee as follows: "The council

"*Must* refer every educational matter to the committee except the raising a rate or borrowing money ;

"*May*, in case of urgency, act without awaiting the report of the committee ;

"*May* delegate, on any terms it pleases, its powers under the Act to the committee ; but

"*Must not* delegate its power of raising a rate or borrowing money. Under all circumstances the council is responsible, whether for its own action or for that of the committee."

(3) With respect to the scheme for the constitution of the education committee it will be observed that the scheme *must provide*—

(1.) For the appointment by the council of at least a majority of the committee, the persons so appointed being members of the council, unless in the case of a county the council otherwise determine ;

(2.) For the appointment by the council of persons of experience in education, and of persons acquainted with the needs of the various kinds of schools in the area for which the council acts, these appointments being made on the nomination or recommendation, where it appears desirable, of other bodies (including associations of voluntary schools) ; and

(3.) For the inclusion of women as well as men among the members of the committee.

By sec. 23 it is provided that a woman is not disqualified either by sex or marriage from being on any education committee under the Act.

The scheme *may* also provide for the appointment, if desirable, of members of school boards existing on the 18th December, 1902, as members of the first committee.

As regards the appointment of persons of experience in education and of persons acquainted with the needs of the various kinds of schools for which the council act, they may be selected by the council from amongst their own members or from outside the council, or may be appointed on the nomination or recommendation of other bodies where it appears desirable.

No qualification by rating or residence is required for persons appointed from outside the council.

With reference to the nomination or recommendation of other bodies the Board of Education in the memorandum above referred to state as follows :—

"It is probable that the representation of certain educational interests within the area of a council may be effected most satisfactorily by the nomination of a member of the committee by some society within the area or representative of some educational interest within the area. This course may save the council some trouble in selection, and may also be most satisfactory to the society which is to be represented. In other cases it might be more convenient that a society should be invited to recommend a representative, or to recommend certain persons from among whom the council might choose a representative. In the case of nomination it must be assumed that the council places itself in the hands of the body whom it invites to nominate. In the case of recommendation, suggestions might be made on both sides with a view to the choice of some one acceptable to the council and representative of the interest concerned. In each case the appointment is made by the council, but either method would ensure that the person appointed was considered to be really representative by the interest concerned."

The Board of Education specify the following as the more important matters for which a draft scheme should provide :—

The number of the proposed committee.

How many are required to be members of the council.

The educational interests which it is proposed should be represented.

How it is proposed to secure their representation—by selection, recommendation, or nomination.

What security is provided for the permanence of such representation.

What provision is made for the appointment of women.

If more committees than one (in the case of a county)—are they constituted for separate areas or for separate administrative duties—their proposed numbers and composition—the number, duties and composition of sub-committees.

The term of office of members of the committee, and the arrangements for retirement and the filling of vacancies, occurring casually or at stated times.

Any scheme may contain such incidental or consequential provisions as may appear necessary or expedient (sec. 21 (2)).

The Board of Education, having received applications for suggestions with respect to the framing of schemes for the constitution of education committees, have issued a memorandum containing suggestions as to the main matters which should be provided for by schemes, and alternative forms of clauses to meet the different cases as may be determined by the council. This memorandum will be found in the Appendix (p. 673).

The Board of Education state, "All matters relating to the proceedings of the education committee are matters which are more properly determined by the appointing council under paragraph (1) of the First Schedule to the Act than determined by the scheme. The powers to be exercised, and the duties to be performed, by the council, so far as they are not regulated by the Act, are also matters which should be regulated by the council from time to time, and should not be included in the scheme. The same remark applies with even greater force to any provision in the scheme as to the delegation of powers."

(4) As regards disqualification by reason of holding an office or place of profit, or having any share or interest in a contract or employment, the provisions of sec. 12 of the Municipal Corporations Act, 1882 (45 & 46 Vict., c. 50), apply to members of the council of a borough, and also to members of a county council by operation of secs. 2 and 75 of the Local Government Act, 1888.

Sec. 12 of the Municipal Corporations Act provides as follows:—

A person shall be disqualified for being elected and for being a councillor if and while he—

(a) Is an elective auditor, . . . or holds any office or place of profit, other than that of mayor or sheriff, in the gift or disposal of the council . . .

(c) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council.

But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in

- (a) Any lease, sale, or purchase of land, or any agreement for the same ; or
- (b) Any agreement for the loan of money, or any security for the payment of money only ; or
- (c) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted ; or
- (d) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough ; or
- (e) Any railway company, or any company incorporated by Act of Parliament or Royal Charter, or under the Companies Act, 1862.

The Local Government Act, 1894, with reference to disqualifications of members of urban district councils other than the councils of boroughs, by sec. 46, provides as follows:—

A person shall be disqualified for being elected or being a member of a council of a district other than a borough if he . . .

- (a) Holds any paid office under the . . . district council ; . . .
- (e) Is concerned in any bargain or contract entered into with the council . . . or participates in the profit of any such bargain or contract, or of any work done under the authority of the council.

Provided that a person shall not be disqualified for being elected, or being a member or chairman of any such council by reason of being interested—

- (a) In the sale or lease of any lands, or in any loan of money to the council . . .
- (b) In any newspaper in which any advertisement relating to the affairs of the council . . . is inserted ; or
- (c) In any contract with the council . . . as a shareholder in any joint stock company . . .

When the council of a county or of a borough appoint the education committee, a person who, under the provisions of secs. 2 and 75 of the Local Government Act, 1888, and sec. 12 of the Municipal Corporations Act, 1882, is disqualified for being a member of the council of the county or borough by reason of holding an office or place of profit or having any share or interest in a contract or employment is also disqualified for being a member of the education committee.

When the council of an urban district, other than a borough, appoint the education committee, the provision applies to a person who on like grounds is disqualified under sec. 46 of the Local Government Act, 1894, for being a member of the council of the district.

It is, however, to be observed that by the Second Schedule (9) of this Act provision is made by which disqualification of persons who at the time of the passing of the Act were members of any council and who will become disqualified for office as members of the council in consequence of the Act, may be temporarily avoided. In such cases, the disqualification, if the council so resolve, will not take effect until a day fixed by the resolution, not being later than the next ordinary day of retirement in the case of a county council, the next ordinary day of election of councillors in the case of the council of a borough, and the 15th of April, 1904, in the case of an urban district council. Where a person is under this resolution temporarily relieved from disqualification as a member of the council, he will during the like period be relieved from disqualification for serving as a member of the education committee appointed by the council.

There is the further exception which is provided for by the present section—viz. that no such disqualification shall apply to a person by reason of his holding office in a school or college aided, provided, or maintained by the council. This saving, which refers to a person holding office in a school or college for higher education or a public elementary school, only applies to the education committee and not to the council appointing the committee.

It will be borne in mind that contracts entered into with school boards will be taken over by the local education authorities.

In connection with the question as to the disqualifications which arise under the statutes above mentioned, the following cases may be referred to:—

In *R. v. Francis* (18 Q. B. 526; 21 L. J. Q. B. 304; 16 Jur. 1046), it appeared that F., at the request of the mayor and town clerk, in 1843, undertook to collect, arrange, and bind the books, &c., of the corporation. The remuneration was not then fixed. F. was elected a town councillor in 1846, and in 1849, while still engaged in the undertaking, he agreed to complete the work for 150*l.* as the amount of his actual disbursements and expenses. The offer was accepted by the town council, and a minute was made of a resolution by them to that effect, but the corporate seal was not affixed to the resolution or any minute of it, and no contract under the corporate seal was entered into between the corporation and F. In July, 1849, he received 50*l.* on account, and in November, 1849, he was re-elected a councillor of the borough. He received no payment after that in July, 1849, and had not proceeded with his undertaking after his election. It was held, however, that there was a "contract," and that F. was disqualified by operation of the 5 & 6 Wm. 4, c. 76, sec. 28, which provided that a person should not be qualified to be elected or to be a councillor of a borough during such time as he should have directly or indirectly any share or interest in any contract or employment with, by, or on behalf of the council.

In *Le Feuvre v. Lankester* (3 E. & B. 530; 23 L. J. Q. B. 254; 18 Jur. 894), it appeared that the town council, as the local board of health, ordered certain works to be done, in the course of which it was necessary to erect some lamps and a considerable quantity of iron railing. The superintendent of the works ordered this iron work at a foundry belonging to an alderman of the borough and his partner (Messrs. Lankester), and they supplied it. The greater part of the work was let to contractors who were to supply the iron work, and it was the contractors who paid Messrs. Lankester for this part of the iron. A few small articles were for extra work not included in the contract, and for these the town council or local board of health paid Messrs. Lankester direct. It did not appear that, at the time the goods were supplied, Messrs. Lankester were aware that any part consisted of extras. It was held that this was not an interest in a contract which disqualified. Coleridge, J.: In the present case, all that is asserted is that the defendant, in the course of his trade, sold certain iron work which was used in carrying out the contract. There is no attempt to show fraud or any previous concert between the defendant and the contractor by which the defendant was to have the benefit of the contractor's custom. This gives the defendant no share or interest in the contract, the existence of which neither affects the price of his goods nor the manner in which he is to be paid for them.

In a case, however, where a Turnpike Act contained a clause prohibiting any trustee from having any share or interest in or being in any manner directly or indirectly concerned in any contract or bargain for making or repairing or in any way relating to the road for which he acts, and from letting out any waggon, horse, &c., for the use of the road, and a trustee of the road let his horse and cart for a certain sum to a contractor for works on the road, to be used in the performance of the works, the defendant was held liable to the penalty: *Lowsley v. White* (5 B. & C. 125).

In *West v. Andrews* (5 B. & Al. 328), the proceedings were taken under sec. 6 of 55 Geo. 3, c. 137, which rendered liable to a penalty any person in whose hands the management, control, or direction of the poor was placed who either in his own name, or in the name of any other person, provided, furnished, or supplied for his own profit any goods, materials, or provisions for the support and maintenance of the poor of the parish for which he retained his appointment, or was concerned directly or indirectly in supplying the same, or in any contract or contracts relating thereto, and a guardian having sold five live sheep to the person who had the contract for the supply of meat, &c., for the poor, it was held that the case fell both within the words and spirit of the Act.

In *Nicholson v. Fields* (7 H. & N. 810; 31 L. J. Ex. 233), F. was a commissioner under a local Act, which provided that a person who, after his appointment as a commissioner, should be concerned or participate in any manner in any contract, should thenceforth cease to be a commissioner. It was proved by the minute book of the commissioners, and the production of bills signed by F., that in August, 1859, F. was paid by the commissioners 5*l.* 13*s.* 1*d.* for timber supplied by him to the commissioners in 1858 and 1859. In November, 1859, he received a further sum of 2*l.* 1*s.*, and in May, 1860, 2*l.* 19*s.* 10*d.* He also sent to the commissioners an invoice for 4*s.*, for lime supplied on 30th March, 16th May, 17th July, and 17th August, 1860. The course of business was for the surveyor of the commissioners to order the materials, and the production of the invoice with the defendant's signature at the bottom was warrant for payment. It was held that F., by being concerned in a contract, had become disqualified, and that the invoice for the 4*s.* for the lime was evidence from which the jury might find that the defendant was concerned or participated in a contract within the meaning of the Act. Pollock, C.B.: This case differs from *Woolley v. Kay* (1 H. & N. 307; 25 L. J. Ex. 351), where some members of the court expressed an opinion that a mere casual buying and selling, as, for instance, going into a shop and buying an article, and paying for it over the counter, would not be a contract or bargain for furnishing, supplying, or selling an article, so as to render the party liable to a penalty if he continued to act as a commissioner. Here there were several invoices, one of them showing a dealing which extended over four months. The amount is trifling, but that is immaterial, for it was intended that every description of dealing by the commissioners should be put an end to so far as legislation could do it, and that the party to a contract should be rendered incapable of exercising the office of commissioner—in other words of dealing with himself. Martin, B.: A case was put of the commissioners buying some trifling article at a shop kept by one commissioner, and paying for it over the counter. It seems to me that this is not a contract within the statute, but I am by no means prepared to say that if articles were to be supplied from

time to time on credit, there would not be a contract. The buying a pennyworth of nails may not be a contract, but that is different from supplying lime on credit. Here there was evidence of a continuous dealing and supplying on credit of an article which the commissioners must buy.

Cox v. Ambrose (60 L. J. Q. B. D. 114) was a case under the Municipal Corporations Act, 1882. Sec. 12 of that Act provides, *inter alia*, that "a person shall be disqualified for being elected and for being a councillor if and while he . . . (c) has directly or indirectly by himself or partner any share or interest in any contract or employment with, by, or on behalf of the council." The respondent was a member of a firm interested in certain continuing contracts with a corporation of a borough unexpired at the time of a municipal election for that borough. Before offering himself as a candidate at the election the respondent dissolved partnership, and assigned all his interest in these contracts to the other partner, remaining liable, however, on bonds securing the due performance of the contracts. The corporation was not a party to the assignment and gave no assent thereto, nor did they release the respondent from the contracts. The respondent's connection with the contracts, and the fact that his candidature was objected to on that ground, were matters of notoriety in the ward for which he was a candidate. On a petition against his return as a councillor, it was held that the respondent was not qualified to be elected within the meaning of the above section, and that votes given for him were thrown away.

In *Fletcher v. Hudson* (L. R. 7 Q. B. D. 611; 51 L. J. Q. B. D. 48; 46 L. T., N. S., 125; 30 W. R. 349), an hotel keeper received in March, 1879, *q/l.* 19*s.* 6*d.* from the local board, of which he was a member, to reimburse him for work done by him in 1877 and 1878 for the surveyor of the board. He did the work, not by any arrangement expressed or implied with the local board, but at the request of the surveyor, because the surveyor was unable to get the work done by any one else in the time, and delay would have occasioned great expense. It was stated that he made no profit out of the transaction. The last item in the account, which was paid in March, 1879, was dated 16th March, 1878. By the Public Health Act, 1875 (38 & 39 Vict., c. 55), any member of a local board who "in any manner is concerned in any bargain or contract entered into by such board" shall cease to be such member. It was held that there was ample evidence of a contract with the local board in 1878 for the work which was then done and of the defendant being concerned in the contract.

In the case of *Tomkins v. Folliffe* (51 J. P. 247), which came before Mr. Justice Field on the 4th April, 1887, an action was brought to recover from the defendant penalties which he was alleged to have incurred by reason of having acted as a member of the Sandown Local Board after he had become disqualified by reason of his having been concerned in a contract entered into by the local board. The defendant was elected a member of the board in April, 1884, for a period of three years. In March, 1885, the local board entered into a contract with C., by which C. undertook to make certain alterations of gas fittings in the town hall for 15*l.* In order to effect these alterations it was necessary that scaffolding should be erected. C., who was an ironmonger, employed the defendant, a builder, to erect the scaffolding, and the defendant charged C. the sum of 1*l.* 6*s.* C. delivered to the local board an account for 15*l.* for the work done,

including a charge for the 1*l.* 6*s.* in respect of the work done by the defendant. In April, 1885, the defendant acted as a member of the board. The plaintiff claimed that under and by reason of the circumstances the defendant had become disqualified, and was liable to pay the penalty sued for, viz., 50*l.* and costs. It was stated that though the defendant sent in his bill to C., when he found that the chairman of the local board raised an objection, he withdrew the bill and had received no payment whatever for what he had done. The defendant was held to have been "concerned" in the contract in question, and judgment was given for the plaintiff for 50*l.* with costs.

In *Tanfield* (App.) v. *Reynolds* (Resp.) (39 J. P. 293), an information was preferred against the appellant charging him with having in March, 1874, he then being a member of the school board for the borough, shared and been concerned in the profits of a contract with the board. It was proved that for three years up to the month of January, 1874, the appellant (who was a printer in partnership with Orchard) was a member of the school board, and was a candidate for re-election at the triennial election of the board in that month, and was duly re-elected a member of the new board. Previous to the election, the appellant received from the mayor (who was the returning officer of the election) some of the orders for printing the necessary documents and forms required for the election, but none of the items in the appellant's accounts were ordered by the school board, nor did the school board exercise any control or authority over the returning officer with respect to the orders he gave, or in any way interfere with the giving of the orders. After the election the whole of the tradesmen's accounts were sent to the mayor, and were examined by the town clerk (including that of the appellant and Orchard his partner, amounting to 11*l.* 8*s.*), and they were afterwards forwarded to the school board, and were examined by the finance committee of the board, of which the appellant was a member, and were subsequently paid by cheques of the board on their treasurer out of the school fund. It was admitted by the appellant that he was in partnership with Orchard, and received a share of the profits on the account. The justices having convicted, the Court of Queen's Bench held that the evidence was quite sufficient to justify the conviction.

In *Nutton v. Wilson* (L. R. 22 Q. B. D. 744; 58 L. J. Q. B. 443; 37 W. R. 522), an action was brought to recover a penalty of 50*l.* under the Public Health Act, 1875, from the defendant, on the ground that whilst a member of a local board he had been concerned in two contracts made by the local board, and had acted as a member after being disqualified by reason of having been so concerned. The defendant, who was a joiner, was elected a member of the local board in 1885. In October, 1886, the local board entered into a contract with H. for the supply of warming apparatus for the offices of the local board. H. found that certain joiner's work was necessary in the course of fitting up this apparatus, and he went to the defendant's shop and asked his foreman to do it. The work was done by the defendant's workmen, and the bill for it to the amount of 1*l.* 9*s.* was paid by H. to the defendant. In December, 1886, the local board contracted with one B. for the supply of a water-tank, and similar transactions took place between B. and the defendant, the defendant's bill, amounting to 3*l.* 14*s.*, being paid to him by B. Mr. Justice A. L. Smith considered that he was bound by the decision of Mr. Justice Field in *Tomkins v. Joliffe*, and gave judgment for the plaintiff. The defendant appealed. It was contended for the appellant that he was

not in any manner concerned in the contracts : he had only indirectly assisted in carrying them out after they were made. For the respondent it was urged that the defendant himself moved the acceptance of the contracts of H. and B., and therefore knew of the contracts. The work was done on the premises of the local board, and in one case the defendant received the invoice. The Court of Appeal dismissed the appeal, the Master of the Rolls observing, "Here a member of a local board whilst acting as such has done part of the work which contractors with the board had contracted with them to do. As he did part of the work under the contracts, and was paid for the work that he did, it is impossible to say that he was not in any way concerned in these contracts."

In *Hunnings v. Williamson* (L. R. 11 Q. B. D. 533 ; 52 L. J. Q. B. 416 ; 49 L. T., N. S., 361 ; 32 W. R. 267 ; 48 J. P. 132), the brother of the defendant entered into a contract with a vestry under the Metropolis Management Act, 1855, and in order to enable him to carry it out borrowed money from the defendant, who by way of security took an assignment of the contract. The defendant subsequently was elected a member of the vestry. It was held that the defendant was interested in a contract with the vestry.

In *Barnacle v. Clark* ([1900] 1 Q. B. 279 ; 69 L. J. Q. B. 15 ; 48 W. R. 336 ; 81 L. T. 484 ; 64 J. P. 86) an information was laid against C., who was a member of a school board, charging him that whilst such member he shared or was concerned in the profits of a bargain or contract with, or certain work done under the authority of the school board or managers appointed by them, by supplying sand and gravel to Traynar, a builder who at the time was a contractor for the building of schools at S. It was proved that C. supplied sand and gravel to Traynar, who was under a contract in writing with the school board for the building of schools at S., that to the knowledge of C. the sand and gravel were sold to Traynar to be used by him in the building of the schools, that part of the sand and gravel was delivered by C. at the site of the schools and that part was fetched from the sandpits of C. by Traynar. A receipt in the handwriting of C. for the price of the sand and gravel was produced. It was not suggested that C. had made any excessive profit out of the sand and gravel supplied, and it was contended that the only place at S. where sand and gravel could be purchased was the sandpit of C., and that if C. had not supplied it the contractor would have had to go some miles to obtain a supply, which would have been more expensive in consequence of the cartage. Traynar obtained the sanction of the architect before using the sand and gravel of C., and Traynar only paid the regular charges for them. C. was previously a stranger to him. The justices, on these facts, held that C. had not been guilty of any offence under sec. 34 of the Act and dismissed the information. On a case stated by the justices it was held by the Court (Ridley and Darling, JJ.) that the decision of the justices was wrong, and that the case should be remitted to them with an intimation to that effect. Ridley, J., said : "It is clear that the respondent was concerned in 'work done under the authority of the board,' for he supplied goods for doing the work. The words 'concerned in' are general words, but in my opinion they clearly cover the supply of materials for carrying out the work."

See also *Pope v. Backhouse* (8 Taunt. 239), *Baker v. Waite* (1 A. & E. 514), and *Davies v. Harvey* (43 L. J. M. C. 121, 30 L. T. N. S., 629) with respect to guardians supplying goods and materials.

With respect to the provision in sec. 12 of the Municipal Corporations Act, 1882, as to the disqualification of a person "if and while he," etc., see the case of *Lewis v. Carr* (L. R. 1, Ex. 484), which had reference to the provision in the 5 & 6 Will. IV., c. 76, sec. 28: "Nor shall any person be qualified to be elected or to be a councillor of any such borough or an alderman of any such borough . . . *during such time* as he shall have directly or indirectly," etc. In that case the defendant was a tallow-chandler, and in the year 1874, while holding the office of alderman of the borough, he sold goods on several occasions to the corporation on orders drawn up by the waterworks committee of the council and approved by the council and sent by them to the defendant's place of business. Payment was made at intervals by orders signed by three members of the council and countersigned by the town clerk. In May, 1875, the defendant acted on five several occasions as alderman, and penalties were sought to be recovered. At that time all the goods that had been supplied by the defendant to the council had been paid for, and there were no outstanding transactions between them. It was held by the Court of Appeal, confirming the decision of the Exchequer Division, that the disqualification of any person who has any interest in a contract with the council of a borough to be elected or to be an alderman or councillor of the borough applies only during the continuance of the contract, and that by becoming interested in such a contract an alderman or councillor does not cease to be qualified or become disqualified so as to incur penalties for acting after the determination of the contract.

With regard to the provision in sec. 46 of the Local Government Act, 1894, that a person shall not be disqualified by being interested in the sale or lease of any lands or in any loan of money to the council, it is to be noted that the Public Health Act, 1875, Rule 64, Schedule 2, provided that "no person shall vacate his office by reason of his being interested in the sale or lease of lands or in any loan of money to the local board," and that it was held in *A. v. Gasharth* (L. R. 5 Q. B. D. 321; 49 L. J. Q. B. 509; 42 L. T., N. S., 688; 28 W. R. 596), with reference to these words, that "to the local board" only applied to any loan of money, and that a person who held a lease from a local board of a sewage farm with the ordinary covenants in the lease, was not disqualified for holding office as a member of the local board.

In a case in which the Local Government Board were called upon to decide an appeal against the allowance by the auditor of a sum charged in the accounts of a school board as paid for four certificates of birth furnished to the school board by the superintendent registrar, who was a member of the school board, it was contended that as, at the time of supplying the certificates, and at the date of payment, the superintendent registrar was a member of the school board, the payment was by operation of this section illegal. The Board stated that they were of opinion that sec. 34 (now repealed) of 33 & 34 Vict., c. 75, did not apply to fees such as those paid in this case, but rather had reference to the profits of work voluntarily undertaken. In such a case there was no bargain or contract, and the superintendent registrar could not refuse to give the certificates, which were obtained upon payment of fixed fees. The Board accordingly held that the district auditor was right in allowing the charge.

(5) With regard to the constitution of a separate education committee *for any area in the county*, it will be observed from sub-sec. (6) that the Board of Education before approving any scheme which provides for the appointment of more than one education committee are to satisfy themselves that due regard is paid to the importance of the general co-ordination of all forms of education.

The Board of Education state in their memorandum on the Act (see Appendix, p. 671) :—

“It would not be desirable to perpetuate the severance of elementary from higher education by the creation of separate committees for each. But it may often be convenient to establish sub-committees which might, under the supervision of the education committee, administer the various forms of education.”

As to the appointment of sub-committees by the education committee, see First Schedule (6), which enables the committee, subject to any directions of the council, to appoint such and so many sub-committees consisting either wholly or partly of members of the committee as the committee may think fit.

As regards the provision that a scheme may provide for a joint education committee for any area formed by a combination of counties, boroughs, or urban districts or any part thereof, the Board of Education in their memorandum state as follows :—

“In the case of such a joint committee it is necessary that a majority of the members should be *appointed* by the councils of the counties, boroughs, or districts concerned ; it does not appear necessary that a majority should be *members* of those councils.

“The formation of such committees may be convenient in the case of boroughs or urban districts which may not desire to relinquish permanently their powers under the Act, but may, nevertheless, desire to work in close co-operation with the county in which they are situated.”

(6) As to the appointment of more than one committee for any area within a county, see note on sub-sec. (5).

The Board of Education in their memorandum state that “a ground on which the Board might be asked to withhold their approval of a scheme would be the non-representation or inadequate representation of some of the education interests within the area. An educational body or association might complain—

“(a) That the interests with which it was concerned were wholly unrepresented ;

“(b) That the person chosen to represent it was not really representative ;

“(c) That no security was afforded by the scheme for the continuance of its representation.

“Points such as these should be carefully considered in framing a scheme.”

A scheme when approved by the Board of Education has effect as if it were enacted in the Act, and any such scheme may be revoked or altered by a scheme made in like manner and having the same effect as the original scheme (see sec. 21 (3)).

(7) When a scheme has not been made and approved within twelve months from the 18th December, 1902, the Board of Education may, subject to the provisions of the Act, make a provisional order for the purposes of which a scheme might have been made.

Secs. 297 and 298 of the Public Health Act, 1875 (which relate to provisional orders), apply to any such provisional order as if it were made under that Act, but references to a local authority are to be construed as references to the authority to which the order relates, and references to the Local Government Board construed as references to the Board of Education (see sec. 21 (1)).

The sections of the Public Health Act, 1875, which are referred to are set forth in the note on sec. 21 (1) of the Act.

With regard to the notice which by sec. 297 (2) is required to be given of an inquiry, see also the provision in sec. 23 (10), *post*, as to public inquiries by the Board of Education.

The provisional order may contain such incidental or consequential provisions as may appear necessary or convenient (sec. 21 (2)), and a provisional order made for the purposes of a scheme may be revoked or altered by a scheme made in like manner and having the same effect as an original scheme (sec. 21 (3)).

As to the meetings, proceedings, &c., of an education committee, see First Schedule to this Act.

The council by whom an education committee is established may make regulations as to the quorum, proceedings, and place of meeting of the committee, but, subject to such regulations, the quorum, proceedings, and place of meeting of the committee will be such as the committee determine.

The chairman of the education committee at any meeting of the committee has, in case of an equal division of votes, a second or casting vote.

The proceedings of an education committee will not be invalidated by any vacancy among its members or by any defect in the election, appointment, or qualification of any of the members.

Minutes of the proceedings of an education committee are to be kept in a book provided for the purpose, and a minute of those proceedings, signed at the same or next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting of the committee at which the minute is signed, is to be received in evidence without further proof.

Until the contrary is proved, the education committee are to be deemed to have been duly constituted and to have power to deal with any matters referred to in its minutes.

The education committee may, subject to any directions of the council, appoint such and so many sub-committees, consisting either wholly or partly of members of the committee, as the committee think fit.

As the education committee are not a corporate body with a common seal, it would appear to be necessary when a contract requires sealing that the seal of the council should be affixed.

An amendment which was proposed when the Bill was in committee, providing for the payment of the reasonable travelling expenses of the members of the education committee, was negatived.

(8) The powers transferred by this sub-section are those of the county governing bodies who administer the Welsh Intermediate Education Act. These are not transferred to the education committees, but to the local education authorities.

Expenses.

18.—(1.) The expenses of a council under this Act shall, so far as not otherwise provided for, be paid, in the case of the council of a county out of the county fund, and in the case of the council of a borough out of the borough fund or rate, or, if no borough rate is levied, out of a separate rate to be made, assessed, and levied in like manner as the borough rate, and in the case of the council of an urban district other than a borough in manner provided by section thirty-three of the Elementary Education Act, 1876, as respects the expenses mentioned in that section: (1) Provided that—

- (a) The county council may, if they think fit (after giving reasonable notice to the overseers of the parish or parishes concerned), charge any expenses incurred by them under this Act with respect to education other than elementary on any parish or parishes which, in the opinion of the council, are served by the school or college in connection with which the expenses have been incurred; (2) and
 - (b) The county council shall not raise any sum on account of their expenses under Part III. of this Act within any borough or urban district the council of which is the local education authority for the purposes of that Part; (3) and
 - (c) The county council shall charge such portion as they think fit, not being less than one-half or more than three-fourths, of any expenses incurred by them in respect of capital expenditure or rent on account of the provision or improvement of any public elementary school on the parish or parishes which, in the opinion of the council, are served by the school; and (4)
 - (d) The county council shall raise such portion as they think fit, not being less than one half or more than three-fourths, of any expenses incurred to meet the liabilities on account of loans or rent of any school board transferred to them, exclusively within the area which formed the school district in respect of which the liability was incurred, so far as it is within their area. (5)
- (2.) All receipts in respect of any school maintained by a local education authority, including any parliamentary grant, but excluding sums specially applicable for purposes

for which provision is to be made by the managers, shall be paid to that authority. (6)

(3.) Separate accounts shall be kept by the council of a borough of their receipts and expenditure under this Act, and those accounts shall be made up and audited in like manner and subject to the same provisions as the accounts of a county council, and the enactments relating to the audit of those accounts and to all matters incidental thereto and consequential thereon, including the penal provisions, shall apply in lieu of the provisions of the Municipal Corporations Act, 1882, relating to accounts and audit. (7)

(4.) Where under any local Act the expenses incurred in any borough for the purposes of the Elementary Education Acts, 1870 to 1900, are payable out of some fund or rate other than the borough fund or rate, the expenses of the council of that borough under this Act shall be payable out of that fund or rate instead of out of the borough fund or rate. (8)

(5.) Where any receipts or payments of money under this Act are entrusted by the local education authority to any education committee established under this Act, or to the managers of any public elementary school, the accounts of those receipts and payments shall be accounts of the local education authority, but the auditor of those accounts shall have the same powers with respect to managers as he would have if the managers were officers of the local education authority. (9)

With regard to the question as to the funds which will be available for the local education authority when they enter on their duties, it would appear that the funds of any school board or school attendance committee existing at the "appointed day" will be transferred to the local education authority, and will be applicable to their expenses under the Act. It was stated by the First Lord of the Treasury in committee on the Bill that it would be in the power of a county council before the "appointed day" to levy a rate for the monthly or weekly payments for salaries, etc., for which they will become liable on that day (*Parl. Debates*, vol. 15 (1902), 1055). In connection with this question the following statement has been made by the Board of Education with respect to the payments of parliamentary grants :—

1. Practically the whole of the new aid grant under sec. 10 of the Act can be paid to the local authority—not merely the 4s.—within a few days, or at the outside weeks, after the "appointed day,"—the whole or proportionate part, according to the number of months of the financial year that remain after the "appointed day," when the "appointed day" is not April 1.

2. The fee grant in respect of each school will be paid by quarterly

instalments, as hitherto—except that if it be desired by any authority, the Board may be able in many cases to pay some of the instalments sooner than usual—it being clearly understood that in no case will more money be paid in respect of a school between April 1, 1903, and March 31, 1904, than would, under ordinary circumstances, have been paid out of the Exchequer in respect of that school during that period.

3. As regards the annual grant, commonly called the “block grant,” the Board of Education would normally pay it in respect of each school within a few weeks of the close of the school year of each school. But if any authority desires it, the Board would pay, on the same date as instalments of fee grant are paid, instalments of annual grants, say 5s. at a time, or otherwise, rather than hold up the whole payment to the end of the school year. This would, again, put money into the hands of the authorities sooner than would otherwise be the case. But here, again, it must be clearly understood that no more money will be paid by the Board of Education in respect of any school between April 1, 1903, and March 31, 1904, than would under ordinary circumstances have been paid out of the exchequer in respect of that school during that period.

(1) The section refers to the expenses under the Act which are to be defrayed out of rates, not being “otherwise provided for.” The main sources of income other than from rates are the payments from the parliamentary grant for instruction in science and art, subject to conditions laid down by the Board of Education in the case of councils supplying or aiding the supply of higher education, the parliamentary grants payable in respect of public elementary schools, including the aid grant under sec. 10, the amounts which would have been received by school boards under the Agricultural Rates Acts, the fees of scholars where the local education authority allow fees to be charged—less, in the case of a school which is not provided by the local education authority, the proportion of such fees which under sec. 14 is payable to the managers of the school, and payments received for the use of schools provided by the local education authority when not required for school purposes.

In the case of a county or county borough there will also be available the residue under sec. 1 of the Local Taxation (Customs and Excise) Act, 1890. See note on sec. 2, *ante*.

See also sec. 13 of the Act as to moneys arising from an endowment for the purposes of a public elementary school.

It will be observed from sub-sec. 2 of this section that all receipts in respect of any school maintained by a local education authority, including any parliamentary grant, but excluding sums specially applicable for purposes for which provision is to be made by the managers, are to be paid to that authority.

With regard to the transitory provisions in connection with the parliamentary grant, see Second Schedule (11 and 12).

In connection with the expenses of a council it will be borne in mind—

That the liabilities of any school board or school attendance committee existing at the “appointed day,” including liabilities in respect of loans, will be transferred to the council exercising the powers of the school board (Second Schedule (1));

That when under sec. 20 (*b*) of the Act any council relinquish their powers and duties in favour of a county council any liabilities incurred for the purpose of the performance of the duties relinquished including any liabilities incurred under any local act or trust deed will be transferred to the County Council (Second Schedule (2));

That where a district council ceases by reason of this Act to be a school authority within the meaning of the Elementary Education (Blind and Deaf Children) Act, 1893, or the Elementary Education (Defective and Epileptic Children) Act, 1899, any liabilities under those Acts will be transferred to the county council (Second Schedule (7)); and

That any liabilities of an urban district council incurred under the Technical Instruction Acts, 1889 and 1891, and charged on any fund or rate, become charged on the fund or rate out of which the expenses of the council are payable instead of on the first-mentioned fund or rate (Second Schedule (4)).

See also sec. 17 (8) as to liabilities of the county governing bodies under the Welsh Intermediate Education Act, 1889.

The expenses of the council under the Act *in the case of a county*, so far as not otherwise provided for, are to be paid out of the county fund. But the amount which may be raised by the council in any one year out of rates under the Act for the purposes of higher education is not to exceed the limit prescribed by sec. 2 (1) of the Act.

In connection with the expenses of a county council, see also the paragraphs marked (*a*) to (*d*) in this sub-section, sec. 13 (2), and the Second Schedule (7) to the Act.

The expenses of the council *in the case of a borough, whether a county borough or non-county borough*, are to be paid out of the borough fund or rate. Where no borough rate is levied they are to be defrayed out of a separate rate to be made, assessed, and levied in like manner as the borough rate. This is subject to the provision in sub-sec. 4, to meet cases where under local acts the expenses incurred for the purposes of the Elementary Education Acts, 1870 to 1900, have been payable out of some fund or rate other than the borough fund or rate.

As to the limit of the amount which may be raised for the purposes of higher education by the council of a non-county borough, see sec. 3.

The expenses of the council *in the case of an urban district other than a borough* are to be defrayed in the manner provided by sec. 33 of the Elementary Education Act, 1876 (39 & 40 Vict., c. 79, *post*). The expenses under that enactment are to be paid out of a fund to be raised out of the poor rate of the parish or parishes comprised in the district of the authority according to the assessable value of each parish, and the urban district council for the purpose of obtaining payment of such expenses have the same power as a board of guardians have for obtaining contributions to their common fund under the Acts relating to the relief of the poor. As regards the issue of contribution orders and the enforcement of payment, see notes on the section referred to.

With regard to the audit of the accounts under the Act of the councils of counties and of urban districts and of the separate accounts of county boroughs and non-county boroughs under the Act, see sub-secs. 3 and 5 of this section and notes thereon.

See also the provision in note on sub-sec. 3, p. 147, as to the power conferred on the Local Government Board of sanctioning expenses,

such sanction having the effect of precluding a disallowance of those expenses by the auditor.

(2) The county council are to give reasonable notice to the overseers of their proposal to charge expenses in accordance with this sub-section, and the overseers may submit to the council any representations they may think fit on the subject, but they have no appeal against the decision of the council.

(3) This provision is for the purpose of preventing a non-county borough or urban district of which the council are the local education authority for the purposes of Part III. of the Act being rated by the council of the county, as well as by the council of the borough or district, for like purposes.

(4) The decision of the county council as to what portion of the expenses referred to, being not less than one half or more than three-fourths, shall be charged to the parish or parishes which in the opinion of the council are served by the public elementary school, is final and not subject to any appeal.

As to expenses incurred by a county council to meet liabilities on account of loans or rent of any school board transferred to them see paragraph (d) of the sub-section.

(5) In this case also the decision of the county council as to the portion, being not less than one half or more than three-fourths, of the expenses referred to is final and not subject to any appeal.

(6) The sums specially applicable for purposes for which provision is to be made by the managers of a school not provided by the local education authority would include subscriptions, donations, and the sums payable to the managers in respect of the teacher's residence when it forms part of the school premises. There will also be cases where part of the income of an endowment of a school will be available for the purposes referred to, when the whole income is not applicable for those purposes of a public elementary school for which provision is to be made by the local education authority. See sec. 13.

(7) The separate accounts which are required to be kept by the council of a borough of their receipts and expenditure under this Act will be the accounts of the council of a county borough as the local education authority under sec. 1, and the accounts of a non-county borough in respect of higher education under sec. 3, and in respect of elementary education when the council are a local education authority under Part III. of the Act.

The accounts referred to are to be separate from the other accounts of the council of the borough, because it is only the accounts of the council under this Act which will be subject to audit by the district auditor appointed by the Local Government Board, this audit of the separate accounts being substituted for the audit under the Municipal Corporations Act, 1882. All accounts of county councils and urban district councils are now audited by auditors so appointed.

The separate accounts which by the section are required to be kept are to be made up in like manner as the accounts of a county council.

As to the period for which the separate accounts are to be made up,

the accounts of receipts and expenditure of a county council are required by secs. 71 and 73 of the Local Government Act, 1888, to be made up to the end of each local financial year, *i.e.* for the twelve months ending the 31st day of March, and the separate accounts of the borough councils must be made up accordingly.

The accounts of a county council must also be in the form for the time being prescribed by the Local Government Board (sec. 71 of Local Government Act, 1888), and this provision also applies to the separate accounts of the borough council.

The separate accounts are to be audited in like manner and subject to the same provisions as the accounts of a county council.

The Local Government Act, 1888, by sec. 71 (3) provides as follows:—

The accounts of a county council and of the county treasurer and officers of such council, shall be audited by the district auditors appointed by the Local Government Board in like manner as accounts of an urban authority and their officers under secs. 247 and 250 of the Public Health Act, 1875, and those sections and all enactments amending them or applying to audit by district auditors, including the enactments imposing penalties and providing for the recovery of sums, shall apply in like manner as if, so far as they relate to an audit of the accounts of an urban authority and the officers of such authority, they were herein re-enacted with the necessary modifications, and accordingly all ratepayers and owners of property in the county shall have the like rights, and there shall be the same appeal as in the case of such audit. Provided that the First Schedule to the District Auditors Act, 1879, shall be modified in manner described in the Second Schedule to this Act.

The provisions of secs. 247 and 250 of the Public Health Act, 1875, which now apply to the audit of the accounts of urban district councils other than boroughs and their officers, and which by the above-mentioned section of the Local Government Act, 1888, are, with the necessary modifications, made applicable to the audit of the accounts of county councils and the officers of the council, will also apply to the audit of the separate accounts of a borough council, which by this section are required to be kept.

The provisions of secs. 247 and 250 of the Public Health Act are as follows:—

Sec. 247. Where an urban authority are not the council of a borough the following regulations with respect to audit shall be observed, (namely)—

- (1.) The accounts of the receipts and expenditure under this Act of such authority shall be audited and examined once in every year, as soon as can be after the [31st day] of March, by the auditor of accounts [appointed by the Local Government Board]. . . .
- (3.) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days' notice of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever:
- (4.) A copy of the accounts duly made up and balanced, together with all rate books, account books, deeds, contracts, accounts,

vouchers and receipts mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books, or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds :

- (5.) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, receipts and other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same; and if any such person neglects or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury :
- (6.) Any ratepayer or owner of property in the district may be present at the audit, and may make any objection to such accounts before the auditor; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances :
- (7.) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorizing the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made :
- (8.) Any person aggrieved by disallowance made may apply to the Court of Queen's Bench for a writ of *certiorari* to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor; and the said court shall have the same powers with respect to allowances, disallowances, and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application any person so aggrieved may appeal to the Local Government Board, which Board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances, disallowances, and surcharges by the said poor law auditors :

(9.) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision; and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person:

(10.) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district. . . .

Sec. 250. The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers, incidents and consequences as in the case of such last-mentioned accounts.

It will be observed that under sub-sec. 8 of sec. 247 of the Public Health Act, 1875, a person aggrieved by a disallowance may apply to the High Court for a writ of *certiorari* to remove the disallowance into that Court in the same manner, and subject to the same conditions, as are provided in the case of disallowances by auditors under the Poor Law Acts, that the Court shall have the same power with respect to allowances, disallowances, and surcharges under that Act as it has with respect to disallowances or allowances by the Poor Law auditors, or in lieu of such application any person so aggrieved may appeal to the Local Government Board, who shall have the same powers in the case of the appeal as they possess in the case of allowances, disallowances, and surcharges by Poor Law auditors.

With regard to an appeal against the decision of an auditor under the Poor Law Acts, sec. 35 of the 7 & 8 Vict., c. 101, provides that it shall be lawful for every person aggrieved by any allowance, and for every person aggrieved by any disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorized to receive the same all such money, goods, and chattels as are admitted by his accounts to be due from him or remaining in his hands, to apply to the [High Court of Justice] for a writ of *certiorari* to remove into the Court the allowance, disallowance, or surcharge. On the removal of the allowance, disallowance, or surcharge, the Court shall decide the particular matter of complaint set forth in such statement (*i.e.* the statement of the matter complained of—which the statute requires shall be set forth in the notice of the intended application to be given to the auditor) and no other; and if it appear to the Court that the decision of the auditor was *erroneous*, they shall, by rule of the Court, order such sum of money as may have been improperly allowed, disallowed, or surcharged, to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit, by rule of the Court, order

the costs of the person prosecuting such *certiorari* to be paid by the parish or union to which such accounts relate, as to such Court may seem fit.

By the same statute it is provided (by sec. 36) that it shall be lawful for any person aggrieved as aforesaid by any allowance, disallowance, or surcharge, in lieu of making application to the [High Court of Justice] for a writ of *certiorari*, to apply to the Poor Law Commissioners to inquire into and decide upon the *lawfulness* of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and it shall thereupon be lawful for the said commissioners to issue such order therein as they may deem requisite for determining the question. By a subsequent statute (11 & 12 Vict., c. 91, sec. 4) it is enacted that where any appeal shall be made to the said commissioners against any allowance, disallowance, or surcharge made by any auditor in the accounts of any guardians, overseers, or their officers, it shall be lawful for the said commissioners to decide the same *according to the merits of the case*; and if they shall find that any disallowance or surcharge shall have been, or shall be, lawfully made, but that the subject-matter thereof was incurred *under such circumstances as make it fair and equitable* that the disallowance or surcharge should be remitted, they may direct that the same shall be remitted upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge.

As the Local Government Board (in whom the powers of the Poor Law Commissioners are now vested) are by the statutes referred to empowered not only to decide upon the lawfulness of the decision of the auditor, but to exercise an equitable jurisdiction, the cases of appeals to the High Court of Justice under sec. 35 of the 7 & 8 Vict., c. 101, are very exceptional. In appealing to the Local Government Board, the appellants must forward to the Board a copy of the auditor's reasons for making the allowance, disallowance, or surcharge (which, it will be observed, he can be called upon to state in the book of account), together with a copy of his certificate of the disallowance or surcharge. They should also carefully and fully set forth in their appeal the facts and reasons which they may have to submit in support of it.

The Local Government Board hold that the cost of the preparation of an appeal to them against an auditor's surcharge cannot lawfully be charged upon the funds of the local authority.

If persons who have been surcharged by the auditor fail to avail themselves of their remedy by appeal either to the High Court of Justice or the Local Government Board, they cannot afterwards, when summoned before a magistrate for the recovery of the amount, set up any objection to the surcharge. If the magistrate in such case refuse to act, the High Court of Justice will compel him to do so: *R. v. Finnis* (28 L. J. M. C. 201; 5 Jur., N. S., 971).

It is, however, to be observed that by the Local Authorities (Expenses) Act, 1887 (50 & 51 Vict., c. 72), it is provided that "expenses paid by any local authority"—that term including local authorities under this Act—"whose accounts are subject to audit by a district auditor, shall not be disallowed by that auditor, if they have been sanctioned by the Local Government Board." This enactment enables the Local Government Board by their sanction to relieve the members who have authorized expenditure, which through some informality in the proceedings or on other technical grounds may be illegal, from liability

to a surcharge. It is the practice of the Board to decline to sanction under this enactment prospective or recurring expenditure.

Sec. 247, sub-sec. 9, of the Public Health Act, 1875, also provides that the auditors shall recover the sums certified to be due by the like process and with the like powers as in case of sums certified on the audit of the poor rate accounts.

Under the Poor Law Acts the payment of any sum certified to be due by a district auditor may, together with the costs of the proceedings for the recovery thereof, be enforced in like manner as if it were a sum due in respect of the poor rate (47 & 48 Vict., c. 43, sec. 11). See also 11 & 12 Vict., c. 91, sec. 9, as to proof required in proceedings. No proceedings to recover sums certified are to be commenced after the lapse of nine calendar months from the disallowance or surcharge by the auditor, or in the event of an application by way of appeal against the auditor's decision to the High Court of Justice, or to the Local Government Board, after the lapse of nine calendar months from the determination thereon (12 & 13 Vict., c. 103, sec. 9). As to the proceedings for recovery of poor rate by warrant of distress and imprisonment in default of distress, see 43 Eliz., c. 2, sec. 2 ; 17 Geo. 2, c. 38, secs. 7-10 ; 54 Geo. 3, c. 170, sec. 12 ; 12 & 13 Vict., c. 14 ; 39 & 40 Vict., c. 61, sec. 31 ; and 47 and 48 Vict., c. 43.

As regards the payment to be made for the audit of accounts by auditors appointed by the Local Government Board, the District Auditor's Act, 1879, provides that, for the purpose of contributing to the amount required for the payment of the salaries or remuneration and of the expenses of the auditors, there shall be charged on every local authority whose accounts are audited by an auditor so appointed a stamp duty, according to the scale contained in the First Schedule to the Act, and that the duty shall be levied by a stamp on the certificate of the auditor hereinafter mentioned (sec. 2).

Where the accounts of the receipts and expenditure of a local authority are so audited, the local authority are to prepare and submit to the auditor at every audit a financial statement in duplicate in the form and containing the particulars prescribed by the Local Government Board ; one of such duplicates is to have the stamp charged under the Act affixed thereon, and the auditor at the conclusion of the audit is to cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement. He is forthwith to send the duplicate so stamped and certified by him to the Local Government Board (sec. 3).

The duties charged under the Act are to be deemed to be stamp duties under the management of the Commissioners of Inland Revenue, and all Acts relating to stamp duties, particularly those relating to forgery, fraudulent dies, and other offences in connection with stamp duties, apply accordingly ; and such duties may, if the Commissioners so direct, be denoted by adhesive stamps, to be cancelled by the auditor as provided by the Act (sec. 6).

If a local authority fail to comply with the provisions of the Act with respect to a financial statement, the local authority, or if a clerk to the local authority is appointed, that clerk, and if no clerk is appointed, but there is a treasurer or other officer keeping the accounts

which should be comprised in such financial statement, that treasurer or other officer is liable to a fine not exceeding 20*l.* for each offence (sec. 7).

The rate of stamp duties specified in the First Schedule to the Act, as amended by the Local Government Act, 1888, which apply to the separate accounts of boroughs and the accounts of county councils, are as follow :—

Where the total of the expenditure comprised in the financial statement is under 20 <i>l.</i>	the sum shall be	5 <i>s.</i>
20 <i>l.</i> and under 50 <i>l.</i>	" " "	10 <i>s.</i>
50 <i>l.</i> and under 100 <i>l.</i>	" " "	1 <i>l.</i>
100 <i>l.</i> and under 500 <i>l.</i>	" " "	2 <i>l.</i>
500 <i>l.</i> and under 1,000 <i>l.</i>	" " "	3 <i>l.</i>
1,000 <i>l.</i> and under 2,500 <i>l.</i>	" " "	4 <i>l.</i>
2,500 <i>l.</i> and under 5,000 <i>l.</i>	" " "	5 <i>l.</i>
5,000 <i>l.</i> and under 10,000 <i>l.</i>	" " "	10 <i>l.</i>
10,000 <i>l.</i> and under 20,000 <i>l.</i>	" " "	15 <i>l.</i>
20,000 <i>l.</i> and under 50,000 <i>l.</i>	" " "	20 <i>l.</i>
50,000 <i>l.</i> and under 100,000 <i>l.</i>	" " "	30 <i>l.</i>
100,000 <i>l.</i> and under 150,000 <i>l.</i>	" " "	50 <i>l.</i>
150,000 <i>l.</i> and under 200,000 <i>l.</i>	" " "	60 <i>l.</i>
200,000 <i>l.</i> and upwards	the sum shall be 15 <i>l.</i> in addition for every 50,000 <i>l.</i> or part thereof.	

In the case of urban district councils the maximum stamp duty is 50*l.*

(8) For provision as to the fund or rate out of which the expenses under this Act are to be paid in the case of a borough, except in the cases provided for by this sub-section, see sub-sec. (1) of this section.

Nottingham and Oxford are boroughs to which this sub-section refers.

(9) Where the education committee or the managers of any public elementary school are entrusted by the local education authority with the receipt or payment of moneys under the Act, the accounts of those receipts and payments will be the accounts of the local education authority, and will therefore be dealt with as such by the auditor, whether the local education authority are the council of a county, of a borough, or of an urban district.

In the case of managers of a public elementary school, the auditor will have the same powers with respect to their accounts when they are entrusted with the receipt or payment of moneys under the Act, and they will be subject to the same liabilities as if they were officers of the council.

Borrowing.

19.—(1.) A council may borrow for the purposes of the Elementary Education Acts, 1870 to 1900, or this Act, in the case of a county council as for the purposes of the Local Government Act, 1888, and in the case of the council of a county borough, borough, or urban district

as for the purposes of the Public Health Acts, but the money borrowed by a county borough, borough, or urban district council shall be borrowed on the security of the fund or rate out of which the expenses of the council under this Act are payable. (1)

(2.) Money borrowed under this Act shall not be reckoned as part of the total debt of a county for the purposes of section sixty-nine of the Local Government Act, 1888, or as part of the debt of a county borough, borough, or urban district for the purpose of the limitation on borrowing under sub-sections two and three of section two hundred and thirty-four of the Public Health Act, 1875. (2)

(1) The provisions which govern the borrowing by county councils for the purposes of the Local Government Act, 1888, are those contained in sec. 69 of that Act. The provisions which apply in the case of borrowings by the council of a county borough, borough, or urban district for the purposes of the Public Health Acts are those contained in secs. 233-241 of the Public Health Act, 1875. These provisions, so far as they have any bearing on the raising of loans by councils for the purposes of the Education Acts, are set out in the Appendix, with notes on the sections (see pp. 491-499).

With regard generally to borrowing by the councils of counties, county boroughs, boroughs, and urban districts for the purposes of the Education Acts, 1870 to 1902, it is to be borne in mind that a council are not empowered to borrow money for the purpose of meeting their current expenses, and that they have no authority to borrow for any purposes except those for which powers of borrowing are conferred by statute, and in accordance with the statutory provisions applicable to such borrowing powers. If in any case sums are charged in the accounts of a council for interest on moneys borrowed otherwise than in accordance with such statutory provisions, it will devolve on the auditor to disallow the charges, and to surcharge the same on the persons making or authorizing the making of the illegal payment. The persons surcharged will, subject to appeal, be personally liable for the amount of the surcharge made by the auditor. See *R. v. Sir Charles Reed*, in Court of Appeal, reversing the decision of the Queen's Bench Division (L. R. 5 (C. A.) Q. B. D. 485; 49 L. J. (N. S.) Q. B. 600; 42 L. T. (N. S.) 855; 28 W. R. 787). The case *In re Sheffield Permanent Building Society, Ex parte Watson* (21 Q. B. D. 301; 57 L. J. Q. B. 609; 59 L. T. (N. S.) 401; 36 W. R. 829), may also be referred to. In that case the directors of an unincorporated building society which had no borrowing powers borrowed money for the benefit of the society, and gave to the lender as security the promissory notes of the directors. The society was afterwards incorporated under the Building Societies Act, 1874 (37 & 38 Vict., c. 42), and acquired borrowing powers. The appellant, who was the representative of the lender, applied to the society for repayment of the loan, but ultimately agreed to refrain from legal proceedings against the society on the directors giving him a deposit note for the amount due. The directors accordingly gave him a deposit note under the seal of the society, stating that the money was lent by the appellant on the date of the deposit note, and he thereupon

gave up to them the promissory notes above-mentioned. It was held that the deposit note was not binding on the society.

Any loans for the purposes of the Acts (except loans in connection with industrial schools, as to which see note on p. 156) are subject to the sanction of the Local Government Board. In the case of loans of county councils the Board are required by sec. 69 (1) of the Local Government Act, 1888 (see Appendix, p. 491), to take into consideration before giving their consent any representation made by any ratepayer or owner of property rated to the county rate. It is, however, the general practice of the Board, before sanctioning a loan, to cause a local inquiry, after public notice, to be held by one of their inspectors, and at the inquiry any person interested is allowed to appear and be heard. Under sec. 23 (9), *post*, of this Act the provisions of sec. 87 (1) and (5) of the Local Government Act, 1888, will apply to any such inquiry in connection with loans under this Act (see notes on section referred to).

Application should be made to the Local Government Board for sanction to the loan before the expenditure is incurred, although the Board are not precluded from sanctioning loans in respect of works which have been carried out. It is, however, the invariable practice of the Board to refuse to sanction a loan to cover expenditure which has been included in closed and audited accounts.

The precise purposes of the Education Acts for which a council may borrow are not specified in the Acts. School boards were authorized by sec. 10 of the 36 & 37 Vict., c. 86, to borrow for any expense incurred or required to be incurred by them "in providing or enlarging a schoolhouse; or in paying off any debt charged on a schoolhouse provided by them, or on any land acquired by them by gift, transfer, purchase or otherwise for the purposes of this Act; or in any works of improving or fitting up a schoolhouse which, in the opinion of the Education Department, ought by reason of the permanent character of such works to be spread over a term of years." These provisions are, however, repealed by sec. 25 of the present Act.

In sanctioning loans to county councils under the Act the Local Government Board, it may be assumed, will be guided by the provision in sec. 69 (1) (c) of the Local Government Act, 1888 (Appendix, p. 491), which empowers a county council to borrow "for any permanent work or other thing which the county council are authorized to do, and the cost of which ought, in the opinion of the Local Government Board, to be spread over a term of years."

Sec. 234 (1) of the Public Health Act, 1875 (see Appendix, p. 491), applies to borrowings by the councils of county boroughs, boroughs, and urban districts. Councils under that Act are empowered to borrow for permanent works, including any works of which the cost ought, in the opinion of the Local Government Board, to be spread over a term of years.

It was the practice of the Board of Education in sanctioning loans to school boards to include in the sanction expenditure for such purposes as desks, tables, chairs, and all fixed fittings of the school, but not expenditure for books, blackboards, easels, and ordinary school apparatus.

In the case of any application by a local education authority for sanction to a loan for the provision of a new public elementary school, or for the enlargement of such a school when the enlargement is such

as in the opinion of the Board of Education amounts to the provision of a new school, the provisions of secs. 8 and 9 of the Act (see pp. 107, 108) are to be borne in mind. Before sanctioning any loan for the purpose, the Local Government Board will, no doubt, require to be satisfied that the conditions laid down in sec. 8 have been duly complied with, and that, if there has been an appeal under the section, the Board of Education have determined that the proposed new school or enlargement of a school is necessary, or that the enlargement does not amount to the provision of a new school.

The sanction of the Local Government Board is also necessary to the periods for any loans under the Act. The maximum terms which can be sanctioned by them are, in the case of county councils, thirty years (sec. 69 (5) of the Local Government Act, 1888, see Appendix, p. 492), and in the case of the councils of county boroughs, boroughs, and urban districts, sixty years (sec. 234 (4) of the Public Health Act, 1875, see Appendix, p. 495); but the period to be sanctioned within these maximum terms is within the discretion of the Board. The general principles by which the Board are guided in determining the periods for loans sanctioned by them were stated by Mr. N. T. Kershaw, an assistant secretary of the Board, in his evidence before the Select Committee of the House of Commons, which was appointed in 1902 to inquire into the subject of the repayment of loans by local authorities (Parliamentary Paper, No. 239, Session 1902). One of the first principles the Board have in view is that the maximum term of sixty years should be granted only in respect of land purchase, on the ground that Parliament in fixing a maximum period had regard to the most durable item. They are further guided by "two main principles—the first, that the period of the loan should not exceed the period during which the works are likely to endure and be of use for the purpose which they are designed to serve; the second, that the ratepayers of the future should not be unduly burdened with local debt, and so rendered less able to discharge efficiently the larger duties that are likely to come upon them in the future." These general principles, it may be presumed, will be followed by the Board in sanctioning loans under the present Act.

The Public Works Loan Commissioners are authorized by sec. 9 of the Public Works Loans Act, 1875 (38 & 39 Vict., c. 89), to make loans for the purpose of "any schoolhouse or work for which a school board is authorized to borrow under the Elementary Education Acts, 1870 and 1873, or any Act amending the same," and by paragraph (10) of the Third Schedule to the present Act, "local education authority" is substituted for "school board" in this enactment. The commissioners are further empowered by the 59 & 60 Vict., c. 42, to lend money for "any work for which the council of a county, borough, district . . . are authorized to borrow." They can, therefore, make advances for the purpose of any loans which the councils of counties, county boroughs, boroughs, or urban districts are authorized to raise for the purposes of the Education Acts. Such advances will be subject to sec. 11 of the Public Works Loans Act, 1875, which, as amended by sec. 5 of the 61 & 62 Vict., c. 54, provides as follows:—

"Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within a period from the date of the actual advance of such loan not exceeding the

period authorized by a special Act relating to such loan, or if no period be so authorized not exceeding [thirty] years.

"Where a loan has been granted repayable within a period less than the full period allowed by the foregoing provisions of this section, the Loan Commissioners, if the repayment of the loan with interest is in their opinion sufficiently secured by such security as is required by this Act, and if they think fit, may extend the period for the repayment of such loan to a period not exceeding the said full period from the date of the advance of such loan.

"Where no period is authorized by a special Act relating to the loan, the Treasury, on the recommendation of the Loan Commissioners, stating special circumstances, may, either before or after the grant of the loan, extend the period within which the loan is to be repaid to such period as may be recommended by the Loan Commissioners.

"The Loan Commissioners, in considering whether the period for the repayment of a loan should or should not be the said full period, and the Loan Commissioners and the Treasury in considering whether the period shall be extended as aforesaid, shall have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by such work.

"The first instalment for the repayment of every loan shall be made payable within a period not exceeding five years from the date of the advance of such loan."

The 59 & 60 Vict., c. 42, which confers the power on the Commissioners to lend to councils, does not authorize any period for which the loans may be advanced by the commissioners. The commissioners, it would appear, are not therefore able to make such advances for a longer period than thirty years, unless the period is extended by the Treasury under the section quoted, notwithstanding that the council may be authorized to borrow for a longer term. Sec. 10 of the 36 & 37 Vict., c. 86, which empowered the commissioners, on the recommendation of the Board of Education, to lend money to school boards for such period, not exceeding fifty years, as might be recommended by that Board, is repealed by sec. 25 of the present Act, as also is the similar provision in sec. 5 (4) of the 56 & 57 Vict., c. 42, which applied to loans for schools for blind and deaf children and the provision in sec. 6 of the 62 & 63 Vict., c. 32, with reference to loans for schools for defective and epileptic children.

The commissioners make it a rule, in the absence of special circumstances, to require moneys advanced by them to be repaid by equal annual instalments of principal in each year where the period for repayment exceeds thirty years, while they allow the repayment to be made by equal annual instalments of principal and interest combined, in cases where the borrower will consent to repay the loan in thirty years, although a longer period may be authorized for the repayment.

With regard to the rates of interest on loans advanced by the commissioners, the Public Works Loans Act, 1897 (60 & 61 Vict., c. 51), by sec. 1, provides that the rates of interest at which loans may be made out of the Local Loans Fund, on the security of local rates, may be fixed by the Treasury from time to time, having regard to the duration of the loans, and shall be such rates, not less than $2\frac{1}{2}$ per cent. per annum, as in the opinion of the Treasury are sufficient to enable such loans to be made without loss to the Local Loans Fund.

The Treasury, by a minute, have directed that on loans granted out of the local loans fund on the security of local rates there shall be chargeable the following rates of interest, viz. :—

Loans if repayable in not exceeding thirty years, $3\frac{1}{2}$ per cent. per annum ;

Loans if repayable in not exceeding forty years, $3\frac{1}{2}$ per cent. per annum ; and

Loans if repayable in not exceeding fifty years, $3\frac{3}{4}$ per cent. per annum.

The fees payable to the commissioners by borrowers are fixed by regulations made by the commissioners, with the approval of the Treasury, under sec. 41 of the Public Works Loans Act, 1875. The regulation now in force for this purpose was published in the *London Gazette* of the 27th of January, 1882, and is as follows :—

“ 1. The fees or sums to be paid by the applicants pursuant to sec. 41 of the Public Works Loans Act, 1875, in respect of loans on rates, shall not exceed the following sums, viz. :—

“ On loans not exceeding 2000*l.*, 1*l.* 1*s.* for every 100*l.* of such loan.

“ On loans exceeding 2000*l.*, and not exceeding 25,000*l.*, 21*l.* plus 2*s.* 6*d.* for every 100*l.* by which such loan exceeds the sum of 2000*l.*

“ On loans exceeding 25,000*l.*, 50*l.*

“ Where a loan is advanced by instalments secured by one deed, there shall be paid in respect of each advance after the first, an additional fee of 1*l.* 1*s.* for every 100*l.* of such advance, but not exceeding 3*l.* 3*s.*

“ For the purpose of this regulation, the total amount to be advanced under one security deed shall be considered as a loan, and fractional parts of 100*l.* shall be considered as 100*l.*

“ In addition to the above fees, the applicants shall pay the stamp duty, counsel's fees, and other disbursements incurred by the Loan Commissioners in respect of the several applications.

“ In respect of all business, not being a loan on rates, the fees or sums payable shall be fixed by the commissioners, regard being had to each particular case.”

The Public Works Loans Act, 1875 (38 & 39 Vict., c. 89), by sec. 29, empowers the Public Works Loan Commissioners, if they think fit, at any time to accept payment of the whole or any part of the principal and interest of any loan or other moneys secured by any mortgage before the time when the same is due. It was the practice of the commissioners to accept repayment of loans without question at any time ; but in November, 1895, the Treasury deemed it necessary to lay down the following rules, subject to which applications for repaying loans in advance should in future be complied with :—

- (1.) That the applicants serve the Lending Department with three months' notice ;
- (2.) That they agree to repay at such times and in such instalments as may be required by the Lending Department, after communication with the Commissioners for the Reduction of the National Debt, who are charged with the administration of the Local Loans Fund ; and
- (3.) That for every 100*l.* outstanding on the loan account they repay such sum as may be certified to be the equivalent of the price at which 100*l.* of Local Loans Stock can be purchased.

The Public Works Loans Act, 1875 (38 & '39 Vict., c. 89), by sec. 36, provides that where "the Loan Commissioners advance any loan for any purpose on the security of a rate, it shall be the duty of the Local Government Board to satisfy themselves that the loan is applied to such purpose; and they may from time to time make such examination as they may think necessary with a view to ascertain that such loan has been so applied." The Local Government Board are accordingly empowered to appoint officers to conduct such examination on their behalf, and the officers appointed will have the same powers to require the attendance of persons and the production of accounts and other documents, so far as such attendance or production is required for the purpose of the examination, as an inspector of the Local Government Board has under the Acts relating to the relief of the poor. This section, it will be observed, applies to all loans granted on the security of a rate, and consequently applies to loans by the commissioners for the purposes of the Education Acts.

By sec. 44 of the same Act it is provided that any person who, for the purpose of obtaining a loan, wilfully gives to the commissioners information which is false in any material particular, is to be deemed guilty of perjury.

The Public Works Loans Act, 1878 (41 Vict., c. 18), contains the following further provision:—Where upon examination, made in pursuance of sec. 36 of the Public Works Loans Act, 1875, with reference to a loan advanced by the Public Works Loan Commissioners for any purpose on the security of a rate, it appears to the Local Government Board that any sum, being the whole or part of the money raised by the loan, has not been applied for the said purpose, the Local Government Board may order that sum to be, within the time named in the order, applied either for the said purpose, or towards the repayment to the Public Works Loan Commissioners of the principal of the loan, or partly in one of such ways and partly in the other; and further, if it appears to them that the sum, or any part thereof, has been applied for some purpose other than that for which it was advanced, may by the same or any other order direct that a sum equal to the amount so misapplied be raised within the time and out of the fund or rate named in the order, and be applied as directed by the order. An order made by the Local Government Board in pursuance of this section may be enforced by writ of *mandamus*.

By the Public Works Loans Act, 1881, sec. 8, the Local Government Board are empowered to make orders as to the expenses incurred by them, or by any officer appointed by them, in making any examination in pursuance of sec. 36 of the Public Works Loans Act, 1875, and any such order may contain directions as to the parties by whom, and the rates out of which, such expenses shall be borne, and may, on the application of the Board, be made a rule of the High Court of Justice.

With the view of giving additional security in the case of loans by the Loan Commissioners, it is provided by sec. 19 of the Public Works Loans Act, 1875, that where a loan has been granted on the security of a mortgage of any rate to any borrower who appeared to the commissioners to have power to levy and mortgage the rate, and has been expended upon the work in respect of which or in or for the benefit of the locality in which the rate or any part thereof is levied, the mortgage of the rate for securing the repayment of the loan with interest shall be valid, and may be enforced, notwithstanding any

defects in the power or title of the borrower by whom the mortgage purports to be granted; and the commissioners may, although such borrower was not legally constituted or is dissolved, or is otherwise incapable and always was incapable of making, levying, or mortgaging the rate, have the same power of making and levying and enforcing the making or levying the rate for the purpose of repaying the loan and interest, and all sums due under the mortgage, as if the borrower had been duly constituted, and was not dissolved, and had full power to make, levy, and mortgage the rate.

The Public Works Loans Act, 1881, by sec. 9, enacts that the unapplied balance of any loan advanced by the commissioners, either before or after the passing of that Act, on the security of a rate, may, with the consent of the commissioners and of the central authority or department, if any, with whose sanction and consent such loan was authorized to be raised, be applied to any purpose to which moneys borrowed on the security of such rate are applicable; and that in construing sec. 36 of the Public Works Loans Act, 1875, and sec. 4 of the Public Works Loans Act, 1878, the purpose to which any such unapplied balance is so applied is to be deemed to be the purpose for which that portion of the loan was advanced. The advantage of this provision is obvious in cases where the works for which a loan was advanced by the Loan Commissioners are carried out at a less cost than the whole amount of the loan, or where, after obtaining the loan, it is found desirable to abandon a part of the works, and other works are required of such a character that the commissioners and the sanctioning authority will assent to their being paid for out of the unapplied balance. Before this power was given, the authority would, in such a case, be required to repay the unapplied balance to the commissioners, even though it might be necessary to reborrow it from them immediately for other works.

The Public Works Loans Act, 1882 (45 & 46 Vict., c. 62, sec. 8), provides that "where, after the passing of this Act (*i.e.*, after the 18th of August, 1882), any money is advanced by the Public Works Loan Commissioners on the security of a rate as defined by the Public Works Loans Act, 1875, the borrowers shall cause their treasurer to keep a separate account under the title of the Public Works Loan Commissioners Loan Account, or such other title as may be approved by the Local Government Board, and shall cause all the advances to be carried to the credit of that account, and all orders or other documents directing payments out of such account shall show on the face of them that the payment is to be made out of that account, and an order or other document for a payment out of the said account shall not be made or given except the payment is for a purpose for which the said advances were made."

With respect to the powers of a local education authority to borrow for purposes connected with industrial schools, see sec. 15 of the 39 & 40 Vict., c. 79, and sec. 3 of the 42 & 43 Vict., c. 48, *post*; for schools for blind and deaf children, see 56 & 57 Vict., c. 42, sec. 5; for schools for defective and epileptic children, 62 & 63 Vict., c. 32, sec. 6; and for costs in connection with provisional orders of the Board of Education as to schemes for the appointment of education committees, see note 1 to sec. 21 of this Act, *post*. In the case of loans in respect of industrial schools, the consent of the Secretary

of State, and not that of the Local Government Board is to be obtained (2 Edw. 7, c. 42, Third Schedule (8)).

(2) For the provisions referred to in this sub-section, see Appendix, pp. 491, 495. Any loans transferred to a council under this Act are to be treated, for the purpose of the limitation on borrowing powers imposed by these provisions, as money borrowed under this Act (Second Schedule (3), *post*), and are not therefore to be reckoned as part of the debt of the council for the purpose of the provisions in question.

Arrangements between Councils.

20. An authority having powers under this Act—

- (a) May make arrangements with the council of any county, borough, district, or parish, whether a local education authority or not, for the exercise by the council, on such terms and subject to such conditions as may be agreed on, of any powers of the authority in respect of the management of any school or college within the area of the council; (1) and
- (b) If the authority is the council of a non-county borough or urban district may, at any time after the passing of this Act, by agreement with the council of the county, and with the approval of the Board of Education, relinquish in favour of the council of the county any of their powers and duties under this Act, and in that case the powers and duties of the authority so relinquished shall cease, and the area of the authority, if the powers and duties relinquished include powers as to elementary education, shall, as respects those powers, be part of the area of the county council. (2)

(1) The authorities having powers under this Act are the councils of counties and county boroughs who under sec. 1 are local education authorities, the councils of non-county boroughs and urban districts who under that section are local education authorities for the purposes of Part III. of the Act (as to elementary education), and the councils of non-county boroughs and urban districts having powers under sec. 3 to supply or aid the supply of education other than elementary.

The Board of Education have pointed out that when the council of a non-county borough or of an urban district relinquish their powers under the second sub-section of this section, it would be possible for the council of the county under this provision to transfer back to the borough or district their powers of management in respect of any school or college within the area of the relinquishing council.

This provision would also appear to allow of the council of a non-county borough or urban district who are a local education authority

for the purposes of Part III. of the Act transferring the management of a school provided by them to the council of the county.

Arrangements under this sub-section are subject to such conditions as are agreed on, and may therefore be made for a limited period.

(2) This sub-section refers to the councils of non-county boroughs and urban districts who under sec. 1 are the local education authority for the purposes of Part III. of the Act (as to elementary education), and the councils of non-county boroughs and urban districts who under sec. 3 are empowered to supply or aid the supply of education other than elementary.

With regard to the relinquishment of powers and duties in these cases, see notes on secs. 3 and 5; see also Second Schedule (2) (8) (16) (17) and (21) (b).

The relinquishment will not necessarily apply to all powers and duties of the authority, but the powers relinquished will be relinquished permanently.

Provisional Orders and Schemes.

21.—(1.) Sections two hundred and ninety-seven and two hundred and ninety-eight of the Public Health Act, 1875 (which relate to provisional orders), shall apply to any provisional order made under this Act as if it were made under that Act, but references to a local authority shall be construed as references to the authority to whom the order relates, and references to the Local Government Board shall be construed as references to the Board of Education. (1)

(2.) Any scheme or provisional order under this Act may contain such incidental or consequential provisions as may appear necessary or expedient. (2)

(3.) A scheme under this Act when approved shall have effect as if enacted in this Act, and any such scheme, or any provisional order made for the purposes of such a scheme, may be revoked or altered by a scheme made in like manner and having the same effect as an original scheme.

(1) See sec. 17 (7) as to the powers of the Board of Education to make a provisional order for the establishment of an education committee where the council are required to make a scheme for the purpose and no such scheme has been made and approved by the Board of Education within twelve months after the 18th December, 1902. The provisions of secs. 297 and 298 of the Public Health Act, 1875, which, subject to the modifications referred to in this section, apply, are as follows:—

Sec. 297. With respect to provisional orders authorized to be made by the Local Government Board under this Act, the following enactments shall be made:—

(1.) The Local Government Board shall not make any provisional

order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates :

- (2.) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject-matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections :
- (3.) The Local Government Board may submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament :
- (4.) If while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to such order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills :
- (5.) Any Act confirming any provisional order made in pursuance of any of the Sanitary Acts or of this Act, and any order in council made in pursuance of any of the Sanitary Acts, may be repealed, altered, or amended by any provisional order made by the Local Government Board and confirmed by Parliament :
- (6.) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament :
- (7.) The making of a provisional order shall be *prima facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with :
- (8.) Every Act confirming any such provisional order shall be deemed to be a public general Act.

Sec. 298. The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly : and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs.

(2) The schemes and provisional orders referred to are those with regard to the establishment of an education committee under sec. 17 (1) and (2).

Provision as to Elementary and Higher Education Powers respectively.

22.—(1.) In this Act and in the Elementary Education Acts the expression “elementary school” shall not include any school carried on as an evening school under the regulations of the Board of Education. (1)

(2.) The power to provide instruction under the Elementary Education Acts, 1870 to 1900, shall, except where those Acts expressly provide to the contrary, be limited to the provision in a public elementary school of instruction given under the regulations of the Board of Education to scholars who, at the close of the school year, will not be more than sixteen years of age: Provided that the local education authority may, with the consent of the Board of Education, extend those limits in the case of any such school if no suitable higher education is available within a reasonable distance of the school. (2)

(3.) The power to supply or aid the supply of education other than elementary includes a power to train teachers, and to supply or aid the supply of any education except where that education is given at a public elementary school. (3)

(1) It is now clearly laid down that a school carried on as an evening school under the regulations of the Board of Education shall not be included in the expression “elementary school,” and consequently after the “appointed day” no such school can be a public elementary school. This follows the lines of the judgment in *R. v. Cockerton*, C. A. (1901), 1 K. B. 726; 70 L. J. K. B. 441, C. A. 84, L. T. 488, see p. 466. When evening schools are carried on it must be in connection with the powers given by the Act with reference to higher education.

For regulations as to public elementary schools conducted as higher elementary schools, see Appendix, p. 653.

(2) The question as to the age up to which there might be admission to a public elementary school was considered by the divisional court in *R. v. Cockerton* [1901], 1 Q. B. 322. All doubt is now removed by the enactment in this sub-section. The limits specified apply except where the Elementary Education Acts expressly provide to the contrary. The 56 & 57 Vict., c. 42, *post*, by sec. 11 provides that for the purposes of the Elementary Education Acts a blind or deaf boy or girl shall be deemed to be a child until the age of sixteen years, and that the period of compulsory education in the case of such a child shall extend to sixteen years. Sec. 11 of the 62 & 63 Vict., c. 32, *post*, contains a similar provision with regard to defective and epileptic children.

As regards the extension of the limits of age, with the consent of the Board of Education, in the case of any school where no suitable

higher education is available within a reasonable distance of the school, it is to be observed that three miles, measured according to the nearest road from the residence of a child, is recognized in sec. 74 of 33 & 34 Vict., c. 75, *post*, as the maximum distance in connection with bye-laws as to school attendance.

(3) With regard to the power of councils to supply or aid the supply of education other than elementary, see secs. 2 and 3.

The training of teachers is a matter of national importance. This sub-section enables the local education authorities to establish training colleges or aid such institutions that already exist. They may be undenominational training colleges and hostels in connection with undenominational training colleges. This will reduce the grievance which has been urged by Nonconformists. The present number of training colleges is insufficient.

Miscellaneous Provisions.

23.—(1.) The powers of a council under this Act shall include the provision of vehicles or the payment of reasonable travelling expenses for teachers or children attending school or college whenever the council shall consider such provision or payment required by the circumstances of their area or of any part thereof. (1)

(2.) The power of a council to supply or aid the supply of education, other than elementary, shall include power to make provision for the purpose outside their area in cases where they consider it expedient to do so in the interests of their area, and shall include power to provide or assist in providing scholarships for, and to pay or assist in paying the fees of, students ordinarily resident in the area of the council at schools or colleges or hostels within or without that area. (2)

(3.) The county councillors elected for an electoral division consisting wholly of a borough or urban district whose council are a local education authority for the purpose of Part III. of this Act, or of some part of such a borough or district, shall not vote in respect of any question arising before the county council which relates only to matters under Part III. of this Act. (3)

(4.) The amount which would be produced by any rate in the pound shall be estimated for the purposes of this Act in accordance with regulations made by the Local Government Board. (4)

(5.) The Mortmain and Charitable Uses Act, 1888, and so much of the Mortmain and Charitable Uses Act, 1891, as requires that land assured by will shall be sold within one year from the death of the testator, shall not apply to any assurance, within the meaning of the said Act of

1888, of land for the purpose of a schoolhouse for an elementary school. (5)

(6.) A woman is not disqualified, either by sex or marriage, for being on any body of managers or education committee under this Act. (6)

(7.) Teachers in a school maintained but not provided by the local education authority shall be in the same position as respects disqualification for office as members of the authority as teachers in a school provided by the authority. (7)

(8.) Population for the purposes of this Act shall be calculated according to the census of nineteen hundred and one. (8)

(9.) Sub-sections one and five of section eighty-seven of the Local Government Act, 1888 (which relate to local inquiries), shall apply with respect to any order, consent, sanction, or approval which the Local Government Board are authorized to make or give under this Act. (9)

(10.) The Board of Education may, if they think fit, hold a public inquiry for the purpose of the exercise of any of their powers or the performance of any of their duties under this Act, and section seventy-three of the Elementary Education Act, 1870, shall apply to any public inquiry so held or held under any other provision of this Act. (10)

(1) The powers conferred by this sub-section refer to teachers or children attending school or college, and they apply not only to schools or colleges for higher education, but also to schools for elementary education.

For definition of the term "college," see sec. 24 (4).

The powers in question may be exercised by the local education authorities and also by the councils of non-county boroughs and urban districts who supply or aid the supply of higher education. The sub-section will assist in removing difficulties. It will, for instance, enable an authority to facilitate the attendance of children at school by the provision of vehicles or the payment of travelling expenses, where otherwise additional school accommodation might have to be provided in consequence of the distance from a school. It will also remove any doubt as to the power of the authority to incur expense of the character referred to when necessary for the attendance of teachers at pupil teachers' centres.

In connection with the provision of conveyances for children, sec. 3 of the Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict., c. 32), may be referred to. Under that section the local education authority may provide guides or conveyances for children who in the opinion of the authority are, by reason of any physical or mental defect, unable to attend school without guides or conveyances.

The Board of Education have stated that this provision is not limited to children attending special classes under that Act, but is intended also to meet the case of children who would otherwise be prevented from attending ordinary public elementary schools.

(2) The powers referred to may be exercised by the council of a county or county borough who are a local education authority under sec. 1, or the council of any non-county borough or urban district having powers under sec. 3.

As to the powers which may be exercised by the authorities referred to for the supply or aiding the supply of education other than elementary, see secs. 2 and 3 and notes on those sections.

This sub-section follows generally the lines of sec. 1 of the Technical Instruction Act, 1891, which empowered a local authority "to make such provision in aid of the technical or manual instruction for the time being supplied in a school or institution outside its district as may, in the opinion of the authority, be necessary for the requirements of the district in cases where similar provision cannot be so advantageously made by aiding a school or institution within its district; and to provide or assist in providing scholarships for or pay or assist in paying the fees of students ordinarily resident in the district of the local authority at schools or institutions within or outside that district."

In the case of a county, it is often the case that a school or college situated in a county borough is much more conveniently situated from the point of view of accessibility than one provided in any part of the county.

(3) When the council of a non-county borough or urban district are under sec. 1 of the Act the local education authority for the purpose of Part III. of the Act (elementary education), the county councillors elected for an electoral division consisting wholly or partly of any such non-county borough or district are not to vote in respect of any question arising before the county council as the local education authority for the county, which relates only to matters under Part III. of the Act.

Were it not for this provision a county councillor in the case referred to would be entitled to vote on questions involving expenses to which the borough or district included wholly or partly in the electoral division which he represents would not be liable to contribute.

(4) Under secs. 2 and 3 the amounts to be raised for supplying or aiding the supply of higher education in any year out of rates under the Act are not to exceed the amounts which would be produced by certain rates in the pound, and in connection with the aid grant under sec. 10 there are references to the amounts which would be produced by a penny rate, and a rate of threepence in the pound.

The first question which arises is whether for ascertaining the produce of the rate, at a certain rate in the pound, the full rateable value should be taken into account or only the assessable value under the Agricultural Rates Acts, *i.e.* the rateable value reduced by an amount equal to one-half of the rateable value of the agricultural land.

Apart from this the amount which a rate will produce at a certain rate in the pound depends to some extent on the amount which is irrecoverable by reason of the allowances to owners who pay the rates

instead of the occupiers, empties, excusals on the ground of poverty, and other causes.

The Local Government Board are therefore to make regulations which will provide in what way the amount which would be produced by any rate in the pound is to be estimated for the purposes of the Act.

(5) The Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict., c. 42), which is intituled "An Act to consolidate and amend the law relating to mortmain and the disposition of land for charitable uses," exempted from the provisions of that Act any assurance by deed of land of any quantity and any assurance by will of land not exceeding one acre for any one schoolhouse for the purposes only of a schoolhouse for an elementary school, or an assurance by will of personal estate to be applied in or towards the purchase of land for the same purpose only. This was subject to the proviso "that a will containing such an assurance, and a deed containing such an assurance and made otherwise than in good faith for full and valuable consideration, shall be executed not less than twelve months before the death of the assurator, or be a reproduction in substance of a devise made in a previous will in force at the time of such reproduction, and which was executed not less than twelve months before the death of the assurator, and is enrolled in the books of the Charity Commissioners within six months after the death of the testator, or in case of a deed the execution of the deed."

The Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict., c. 73), by sec. 5 provides that land may be assured by will to or for the benefit of any charity, but subject to certain exceptions such land shall, notwithstanding anything in the will contained to the contrary, be sold within one year from the death of the testator or such extended period as may be determined by the High Court or any judge thereof sitting at chambers or by the Charity Commissioners.

It is now provided that the Mortmain and Charitable Uses Act, 1888, and the provision above referred to in sec. 5 of the Mortmain and Charitable Uses Act, 1891, which requires that the land assured by will shall be sold within one year from the death of the testator shall not apply to any assurance, within the meaning of the first-mentioned Act, of land for the purpose of a schoolhouse for an elementary school.

"Assurance" within the meaning of the Mortmain and Charitable Uses Act, 1888, includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, devise, will, or other instrument.

As regards the definition of "elementary school" and "schoolhouse," see sec. 3 of 33 & 34 Vict., c. 75, *post*.

(6) As to schemes for the establishment of an education committee, see sec. 17. By sub-sec. 3 of that section it is provided that the scheme shall provide for the inclusion of women as well as men among the members of the committee.

With respect to the appointment of managers of schools, whether provided by the local education authority or not so provided, see sec. 6.

(7) Teachers in a school provided by a local education authority are disqualified for acting as members of that authority, but they may be members of the education committee. See statutory provisions as to disqualification in note to sec. 17 (4)

This provision places teachers in a school maintained but not provided by the local education authority in the same position as regards disqualification for office as members of the local education authority as teachers in a school provided by that authority.

But with reference to these provisions, it is to be borne in mind that by the Second Schedule (9) it is provided that the disqualification of any persons who are, at the time of the passing of the Act (the 18th of December, 1902), members of any council, and who will become disqualified for office in consequence of the Act, shall not, if the council so resolve, take effect until a day fixed by the resolution, not being later than the next ordinary day of retirement of councillors in the case of a county council, the next ordinary day of election of councillors in the case of the council of a borough, and the 15th of April in the year 1904 in the case of an urban district council.

(8) This provision is for the purpose of determining the basis of calculation of the population which entitles the council of a non-county borough or of an urban district to be a local education authority for the purposes of Part III. of the Act (elementary education). The population according to the census of 1901 is conclusive, and in the absence of further legislation will continue to be so, although a later decennial census may have been taken (see sec. 1 and note thereon with regard to extensions of areas).

(9) The sanction of the Local Government Board is required to the borrowing of moneys by a county council under the Local Government Act, 1888, and by the council of a borough or urban district under the Public Health Act, 1875, for the purposes of the Elementary Education Acts and this Act (sec. 19 (1)). Their consent is also required by sec. 2 (1) to the raising by the council of a county in any year for the purpose of supplying or aiding the supply of higher education an amount which would exceed the amount which would be produced by a rate of twopence in the pound. See also powers conferred on them by the Second Schedule (6) and Third Schedule (12).

Before the Board give their decision on such matters they will probably direct local inquiries by one of their inspectors at which any persons interested may attend and be heard.

The provisions of sub-secs. 1 and 5 of sec. 87 of the Local Government Act, 1888, relating to inquiries, which are by this sub-section made applicable to inquiries by the Local Government Board for the purposes of the Act, are as follows :—

87.—(1.) Where the Local Government Board are authorized by this Act to make any inquiry, to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, sanction, or approval to any matter, or otherwise to act under this Act, they may cause to be made a local inquiry, and in that case secs. 293 to 296, both inclusive, of the Public Health Act, 1875, shall apply as if they were herein re-enacted and in terms made applicable to this Act.

(5.) Where the Board cause any local inquiry to be held under this Act, the costs incurred in relation to such inquiry, including the salary of any inspector or officer of the Board engaged in such inquiry, not exceeding three guineas a day, shall be paid by the councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Board may direct, and the Board may

certify the amount of the costs incurred, and any sum so certified and directed by the Board to be paid by any council or authority shall be a debt to the Crown from such council or authority.

The sections of the Public Health Act, 1875, above referred to, are as follows:—

293. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction, approval, or consent is required by this Act.

294. The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein.

295. All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

296. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts.

(10) For provisions of sec. 73 of the Elementary Education Act, 1870, as to inquiries by the Board of Education, see p. 268.

That section requires that notice of the inquiry (except an adjourned sitting) shall be published in such manner as the Board of Education direct seven days at least before the holding thereof. Sec. 13, *ante*, however, requires that ten days' previous notice of an inquiry under that section with regard to endowments shall be given. The provisions of sec. 297 of the Public Health Act, which by sec. 21 of this Act are made applicable to a Provisional Order for the establishment of an education committee by the Board of Education under sec. 17 (7), require that public notice of the local inquiry in the matter, as well as notice of the purport of the proposed order, shall be given by advertisement in some local newspaper circulating in the district to which the Provisional Order relates. The specific requirements in these cases, although they are not expressly imposed by sec. 73 of the Act of 1870, will no doubt be complied with.

Interpretation.

24.—(1.) Unless the context otherwise requires, any expression to which a special meaning is attached in the Elementary Education Acts, 1870 to 1900, shall have the same meaning in this Act. (1)

(2.) In this Act the expression "minor local authority" means, as respects any school, the council of any borough or urban district, or the parish council or (where there is

no parish council) the parish meeting of any parish which appears to the county council to be served by the school. Where the school appears to the county council to serve the area of more than one minor local authority, the county council shall make such provision as they think proper for joint appointment of managers by the authorities concerned. (2)

(3.) In this Act the expressions "powers," "duties," "property," and "liabilities" shall, unless the context otherwise requires, have the same meanings as in the Local Government Act, 1888. (3)

(4.) In this Act the expression "college" includes any educational institution, whether residential or not. (4)

(5.) In this Act, unless the context otherwise requires, the expression "trust deed" includes any instrument regulating the trusts or management of a school or college. (5)

(1) The term "borough," "elementary school," "managers," "parliamentary grant," "ratepayer," "schoolhouse," and "teacher" are defined by sec. 3 of 33 & 34 Vict., c. 75, *post*, and "public school accommodation" by sec. 5, and "public elementary school" by sec. 7 of that Act.

(2) With regard to the appointment of managers by the minor local authorities, see sec. 6.

(3) The meanings of the expressions "powers," "duties," "property," and "liabilities" in the Local Government Act, 1888, are given in sec. 100 of that Act, and are as follows :—

The expression "powers" includes rights, jurisdiction, capacities, privileges, and immunities.

The expression "duties" includes responsibilities and obligations.

The expression "property" includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action, and registers, books, and documents; and when used in relation to any authority, includes any property which on the "appointed day" belongs to, or is vested in, or held in trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such . . . authority.

The expression "liabilities" includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose.

(4) The expression "college" occurs in sec. 2 (2), sec. 4, sec. 20 (a), and sec. 23 ((1) and (2) and Third Schedule (11)) of the Act.

(5) See note on sub-sec. I of sec. 11 as to the effect of this definition of trust deeds.

Provisions as to Proceedings, Transfer, &c., Application of Enactments and Repeal.

25.—(1.) The provisions set out in the First and Second Schedules to this Act relating to education committees and managers, and to the transfer of property and officers, and adjustment, shall have effect for the purpose of carrying the provisions of this Act into effect.

(2.) In the application of the Elementary Education Acts, 1870 to 1900, and other provisions referred to in that schedule, the modifications specified in the Third Schedule to this Act shall have effect.

(3.) The enactments mentioned in the Fourth Schedule to this Act shall be repealed to the extent specified in the third column of that schedule.

For the First and Second Schedules, see pp. 171–192, the Third Schedule, p. 193, and the Fourth Schedule, p. 196.

Application of Act to Scilly Islands.

26. For the purposes of this Act the Council of the Isles of Scilly shall be the local education authority for the Scilly Islands, and the expenses of the council under this Act shall be general expenses of the Council.

The council of the Isles of Scilly, which by this section are constituted the local education authority for the Scilly Islands, are the council constituted by a provisional order which was made by the Local Government Board under the powers conferred by sec. 49 of the Local Government Act, 1888. The provisional order was confirmed by Parliament.

Extent, Commencement, and Short Title.

27.—(1.) This Act shall not extend to Scotland or Ireland, or, except as expressly provided, to London. (1)

(2.) This Act shall, except as expressly provided, come into operation on the appointed day, and the appointed day shall be the twenty-sixth day of March nineteen hundred and three, or such other day, not being more than eighteen months later, as the Board of Education may appoint, and different days may be appointed for different purposes and for different provisions of this Act, and for different councils. (2)

(3.) The period during which local authorities may,

under the Education Act, 1901, as renewed by the Education Act, 1901 (Renewal) Act, 1902, empower school boards to carry on the work of the schools and classes to which those Acts relate shall be extended to the appointed day, and in the case of London to the twenty-sixth day of March nineteen hundred and four. (3)

(4) This Act may be cited as the Education Act, 1902, and the Elementary Education Acts, 1870 to 1900, and this Act may be cited as the Education Acts, 1870 to 1902. (4)

(1) The only provision in the Act which applies to London is that in the third sub-section in this section.

(2) See circular dated the 4th of March, 1903 (p. 693 in Appendix), which the Board of Education have addressed to the several local education authorities with reference to the provision in this sub-section as to the appointed day.

The sections which the Act expressly provides shall come into operation before the appointed day are the following :—

No election of members of a school board shall be held after the passing of the Act (December 18, 1902), and the term of office of members of any school board holding office at that date, or appointed to fill casual vacancies after that date, shall continue to the appointed day. The Board of Education may make orders with respect to any matter which it appears to them necessary or expedient to deal with for the purpose of carrying this provision into effect, and any order so made will operate as if enacted in the Act (Second Schedule (10)).

During the period between the passing of the Act and the appointed day, the managers of any public elementary school, whether provided by a school board or not, and any school attendance committee, shall furnish to the council, which will on the appointed day become the local education authority, such information as the council may reasonably require (Second Schedule (15)).

When an authority having powers under the Act is the council of a non-county borough or urban district, the council may, at any time after the passing of the Act, by agreement with the council of the county, and with the approval of the Board of Education, relinquish in favour of the council of the county any of their powers and duties under the Act, and in that case the powers and duties so relinquished shall cease, and the area of the authority, if the powers and duties relinquished include powers as to elementary education, shall as respects those powers, be part of the area of the county council (sec. 20 (b)).

The period during which local authorities may, under the Education Act, 1901, as renewed by the Education Act, 1901 (Renewal) Act, 1902, empower school boards to carry on the work of the schools and classes to which those Acts relate shall be extended to the appointed day, and in the case of London to the 26th of March, 1904 (sec. 27).

The existing owners, trustees, or managers of a school may, within a period of three months from the passing of the Act, apply to the Board of Education for orders providing for the appointment of foundation managers, where the trust deeds as to the appointment of managers are inconsistent with the provisions of this Act, or are

insufficient or inapplicable for the purpose, or there is no trust deed (sec. 11 (2)).

In connection with this sub-section, see the provision in sec. 37 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63), which provides as follows :—

Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any order in council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

It is clear that the 26th of March, 1903, will not be the "appointed day" generally, and that it will be necessary for the Board of Education to exercise their powers of fixing different days for different purposes and for different provisions of the Act and for different councils.

The deferring of the "appointed day" as regards particular councils it is to be assumed will have the effect of deferring in those cases the date from which the payment of the aid grant under sec. 10 will commence.

(3) For Education Act, 1901, see 1 Edw. 7. c. 11, *post*, and for Education Act, 1901 (Renewal) Act, 1902, see 2 Edw. 7, c. 19, *post*.

(4) The Elementary Education Acts, 1870 to 1900, are—

The Elementary Education Act, 1870 (33 & 34 Vict., c. 75)

The Elementary Education Act, 1873 (36 & 37 Vict., c. 86).

The Elementary Education Act, 1876 (39 & 40 Vict., c. 79).

The Elementary Education (Industrial Schools) Act, 1879 (42 & 43 Vict., c. 48).

The Elementary Education Act, 1880 (43 & 44 Vict., c. 23).

The Education Code (1890) Act, 1890 (53 & 54 Vict., c. 22).

The Elementary Education Act, 1891 (54 & 55 Vict., c. 56).

The Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict., c. 42).

The Elementary Education (School Attendance) Act, 1893 (56 & 57 Vict., c. 51).

The Elementary Education (School Attendance) Act, 1893, Amendment Act, 1899 (62 & 63 Vict., c. 13).

The Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict., c. 32), and

The Elementary Education Act, 1900 (63 & 64 Vict., c. 53).

The several Acts above referred to are given in this volume, together with the School Boards Act, 1885 (48 & 49 Vict., c. 38), the Voluntary Schools Act, 1897 (60 Vict., c. 5), the School Board Conference Act, 1897 (60 & 61 Vict., c. 33), the Elementary School Teachers (Superannuation) Act, 1898 (61 & 62 Vict., c. 57), and the Board of Education Act, 1899 (62 & 63 Vict., c. 33).

SCHEDULES.

FIRST SCHEDULE.

PROVISION AS TO EDUCATION COMMITTEE AND MANAGERS.

A.—Education Committees.

(1.) The council by whom an education committee is established may make regulations as to the quorum, proceedings, and place of meeting of that committee, but, subject to any such regulations, the quorum, proceedings, and place of meeting of the committee shall be such as the committee determine.

(2.) The chairman of the education committee at any meeting of the committee shall, in case of an equal division of votes, have a second or casting vote.

(3.) The proceedings of an education committee shall not be invalidated by any vacancy among its members or by any defect in the election, appointment, or qualification of any members thereof.

(4.) Minutes of the proceedings of an education committee shall be kept in a book provided for that purpose, and a minute of those proceedings, signed at the same or next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting of the committee at which the minute is signed, shall be received in evidence without further proof.

(5.) Until the contrary is proved, an education committee shall be deemed to have been duly constituted and to have power to deal with any matters referred to in its minutes.

(6.) An education committee may, subject to any directions of the council, appoint such and so many sub-committees, consisting either wholly or partly of members of the committee, as the committee thinks fit.

The chairman of the education committee is entitled to have his vote on any question recorded in the same manner as any other member of the committee present at the meeting, and if the votes are then found to be equal, he will be entitled to give a second or casting vote. If the chairman has not already voted, and the votes are found to be equal, he may give his casting vote. When the chairman intends to vote on a question (irrespective of his casting vote), he should give his vote before declaring the numbers voting for and against the motion.

As regards the liability of the printers of minutes of the proceedings of local authorities when the minutes contain statements which are alleged to be slanderous, the case of *Johnson v. Hazell, Watson, and Viney* (L. G. C. (1890) 91) may be referred to. In that case the defendants held a contract with the London School Board for printing, their contract including the printing of the minutes of the proceedings of the school board and committees. At a meeting of a committee of the board one of the members made certain statements with regard to the plaintiff, who had contracted for the erection of schools for the school board. These statements were alleged to be slanderous. The proceedings of the committee were printed by the defendants in accordance with their contract. In consequence of this publication the plaintiff brought an action against the defendants as the publishers of the alleged slanderous statements. The defendants pleaded privilege, and that by sec. 87 of the Education Act, 1870, every ratepayer in the school district was entitled to inspect and take copies of these reports, and that copies had only been supplied to ratepayers. The jury found that the member of the school board did utter the words alleged by the plaintiff, and that he did not utter them *bonâ fide* believing them to be true, and they gave a verdict against the defendants for 2*l.* on the ground that they had published the slanderous statements.

With regard to alleged slanderous statements at a meeting of a local authority by a member of the authority, the principles laid down in *Pittard v. Oliver* (Court of Appeal (1891) 1 Q. B. 474 ; 64 L. T. 758 ; 39 W. R. 311) apply. In that case the defendant, who was a member of a board of guardians, made certain statements at a meeting of the board and in the presence of reporters, which seriously reflected on the conduct of the clerk to the guardians. An action was brought against him in respect of the alleged slander, and the jury found that the statements were not in accordance with the facts, but that they were spoken honestly and without malice and in the belief that they were true, and they gave a verdict for the plaintiff for 40*s.* The question then arose whether the occasion was privileged. It was held by the Court of Appeal that although the statement, which had reference to a question which was under discussion by the guardians, was untrue, it would clearly have been privileged, as it was made without malice and with a *bonâ fide* belief in its truth, if it had been made to his brother guardians alone. Then as regards the presence of reporters, the fact of their presence was not sufficient to deprive him of his privilege while discharging his duty. The reporters were not present by his invitation, and their presence was not subject to his control. Judgment was accordingly entered for the defendant.

As to the time within which an action for libel against a local authority must be brought, see *Reid v. Blisland School Board*, p. 291.

In that case an action was brought against the school board by the late schoolmaster of a school of the board for libel. It appeared that the plaintiff and his wife were employed by the school board to their satisfaction for ten years. The board having given him notice to quit their service, he pointed out that under his agreement they must specify the grounds of his dismissal. And at a subsequent meeting a resolution was read accusing the plaintiff of falsifying the attendance list, and also stating that the sewing taught was not of an efficient character. At the conclusion of the evidence for the plaintiff it was

submitted for the school board that the Public Authorities Protection Act, 1893, applied, and that the action had not been commenced within six months as required by that Act. Mr. Justice Wills held that, looking to the provisions of the Act referred to, the judgment must be for the school board with costs.

B.—Managers.

(1.) A body of managers may choose their chairman, except in cases where there is an ex-officio chairman, and regulate their quorum and proceedings in such manner as they think fit, subject, in the case of the managers of a school provided by the local education authority, to any directions of that authority.

Provided that the quorum shall not be less than three, or one-third of the whole number of managers, whichever is the greater.

(2.) Every question at a meeting of a body of managers shall be determined by a majority of the votes of the managers present and voting on the question, and in case of an equal division of votes the chairman of the meeting shall have a second or casting vote.

(3.) The proceedings of a body of managers shall not be invalidated by any vacancy in their number, or by any defect in the election, appointment, or qualification of any manager.

(4.) The body of managers of a school provided by the local education authority shall deal with such matters relating to the management of the school, and subject to such conditions and restrictions, as the local education authority determine.

(5.) A manager of a school not provided by the local education authority, appointed by that authority or by the minor local authority, shall be removable by the authority by whom he is appointed, and any such manager may resign his office.

(6.) The body of managers shall hold a meeting at least once in every three months.

(7.) Any two managers may convene a meeting of the body of managers.

(8.) The minutes of the proceedings of every body of managers shall be kept in a book provided for that purpose.

(9.) A minute of the proceedings of a body of managers, signed at the same or the next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(10.) The minutes of a body of managers shall be open to inspection by the local education authority.

(11.) Until the contrary is proved, a body of managers shall be deemed to be duly constituted and to have power to deal with the matters referred to in their minutes.

As to the vote of the chairman, see note on First Schedule as to the education committee.

SECOND SCHEDULE.

PROVISIONS AS TO TRANSFER OF PROPERTY AND OFFICERS, AND ADJUSTMENT.

(1.) The property, powers, rights, and liabilities (including any property, powers, rights, and liabilities vested, conferred, or arising under any local Act or any trust deed) of any school board or school attendance committee existing at the appointed day shall be transferred to the council exercising the powers of the school board.

This rule refers to the transfer of the property, powers, rights, and liabilities of a school board or school attendance committee to the local education authority who exercise the powers of the school board under sec. 5 of the Act.

For definition of the terms "property," "powers," and "liabilities," see sec. 24 (3).

As to the "appointed day," see sec. 27.

If the powers of a school board transferred to the local education authority include power to appoint governors of a secondary school, the powers so conferred would be included in the term "rights of a school board," which are transferred by this rule (Secretary to the Board of Education, *Parl. Debates* (1902), vol. 15, 847).

As to the charging of the expenses of a local education authority incurred to meet the liabilities on account of loans or rent of any school board transferred to them, see sec. 18 (1) (*d*).

With regard to all current debts and liabilities it is the duty of the school board to liquidate them as far as practicable before the "appointed day." If they are not so paid and discharged the local education authority may exercise the same powers as might have been exercised by the school board for obtaining from the district of the school board the moneys required for that purpose. See Rule 8 and sec. 86 of Local Government Act, 1894. The same provisions apply to a school attendance committee.

Voluntary schools are not transferred to the local education authorities. The local education authority will be responsible for the cost of the maintenance of voluntary schools after the "appointed day," but they will have nothing to do with any deficit in the accounts of those schools existing on that day or with any expenses incurred by the managers before that day. See also Rule 12 in this Schedule, and notes thereon.

(2.) Where, under the provisions of this Act, any council relinquishes its powers and duties in favour of a county council, any property or rights acquired and any liabilities incurred, for the purpose of the performance of the powers and duties relinquished, including any property or rights vested or arising, or any liabilities incurred, under any local Act or trust deed, shall be transferred to the county council.

Under sec. 20 (*δ*) the council of a non-county borough or urban

district may, subject to the conditions referred to in that section, relinquish in favour of the county council their powers under sec. 3 as regards supplying or aiding the supply of education other than elementary, and the council of a non-county borough or urban district, when they are the local education authority under sec. 1 of the Act for the purposes of Part III. of the Act as to elementary education, may also, subject to the like conditions, relinquish their powers in favour of the county council. This rule applies to the transfer to the county council of property, rights, and liabilities, in the case of any such relinquishment. For definition of the terms "property" and "liabilities," see sec. 24 (3).

(3.) Any loans transferred to a council under this Act shall, for the purpose of the limitation on the powers of the council to borrow, be treated as money borrowed under this Act.

Sec. 19 (2) provides that money borrowed under this Act shall not be reckoned as part of the total debt of a county for the purposes of sec. 69 of the Local Government Act, 1888, or as part of the debt of a county borough, borough, or urban district, for the purpose of the limitation of borrowing under sub-secs. (2) and (3) of sec. 234 of the Public Health Act, 1875. This rule brings within the terms of the enactment referred to any loans transferred to a council under this Act.

(4.) Any liability of an urban district council incurred under the Technical Instruction Acts, 1889 and 1891, and charged on any fund or rate, shall, by virtue of this Act, become charged on the fund or rate out of which the expenses of the council under this Act are payable, instead of on the first-mentioned fund or rate.

The liabilities incurred under the Technical Instruction Acts, 1889 and 1891, in the case of an urban district, were under those Acts charged on the district fund and general district rate. In the levy of a general district rate, tithes, or any tithe commutation rent-charge, land used as arable, meadow, or pasture ground only, or as woodlands, market-gardens, and nursery grounds, and land covered with water or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, are assessed in the proportion of one-fourth part only of the net annual value. The expenses of an urban district council under this Act (see sec. 18 (1)) will, under sec. 33 of the Elementary Education Act, 1876 (39 & 40 Vict., c. 79), be defrayed out of the poor rate of the parish or parishes comprised in the district. There are no exemptions in the case of the poor rate similar to those above referred to with regard to a general district rate, and it is in consequence of this that the provision in this rule is made.

(5.) Section two of this Act shall apply to any balance of the residue under section one of the Local Taxation (Customs and Excise) Act, 1890, remaining unexpended and unappropriated by any council at the appointed day.

Sec. 2 of the Act provides for the appropriation of the residue under

sec. 1 of the Local Taxation (Customs and Excise) Act, 1890, to the supply or aiding the supply of education other than elementary. This rule brings within that enactment any balance of the residue remaining unexpended and unappropriated by any council at the "appointed day."

As to the "appointed day," see sec. 27.

(6.) Where the liabilities of a school board transferred to the local education authority under this Act comprise a liability on account of money advanced by that authority to the school board, the Local Government Board may make such orders as they think fit for providing for the repayment of any debts incurred by the authority for the purposes of those advances within a period fixed by the order, and, in case the money advanced to the school board has been money standing to the credit of any sinking fund or redemption fund or capital money applied under the Local Government Acts, 1888 and 1894, or either of them, for the repayment to the proper fund or account of the amount so advanced.

Any order of the Local Government Board made under this provision shall have effect as if enacted in this Act.

Under local Acts the councils of certain boroughs have been empowered to raise moneys for the purpose of loans to school boards. This provision applies to cases where such advances have been made to school boards and there are liabilities outstanding with respect to them which under the Act are transferred to the council by whom the moneys were advanced.

(7.) Where a district council ceases by reason of this Act to be a school authority within the meaning of the Elementary Education (Blind and Deaf Children) Act, 1893, or the Elementary Education (Defective and Epileptic Children) Act, 1899, any property or rights acquired and any liabilities incurred under those Acts shall be transferred to the county council, and, notwithstanding anything in this Act, the county council may raise any expenses incurred by them to meet any liability of a school authority under those Acts (whether a district council or not), and transferred to the county council, off the whole of their area, or off any parish or parishes which in the opinion of the council are served by the school in respect of which the liability has been incurred.

Under the Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict., c. 42, *post*), and under the Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict., c. 32, *post*), district councils, where there were no school boards, were the school authorities for the purpose of those Acts. The powers of the district councils under those Acts are now transferred to the local education authority, who, under sec. 5 of this Act, exercise all the powers of a school board. The powers of the district councils as school authorities under those Acts necessarily cease when the county council become the local education authority.

(8.) Sections eighty-five to eighty-eight of the Local Government Act, 1894 (which contain transitory provisions), shall apply with respect to any transfer mentioned in this schedule, subject as follows :—

- (a) References to “the appointed day” and to “the passing of this Act” shall be construed, as respects a case of relinquishment of powers and duties, as references to the date on which the relinquishment takes effect ; and
- (b) The powers and duties of a school board or school attendance committee which is abolished, or a council which ceases under the provisions of this Act to exercise powers and duties, shall be deemed to be powers and duties transferred under this Act ; and
- (c) Sub-sections four and five of section eighty-five shall not apply.

For “appointed day,” see sec. 27, and with regard to relinquishment of powers and duties, see sec. 20 (b).

As to abolition of school boards and school attendance committees, see sec. 5.

With regard to district councils which cease to be school authorities under the Elementary Education (Blind and Deaf Children) Act, 1893, *post*, and the Elementary Education (Defective and Epileptic Children) Act, 1899, *post*, see Rule 7.

The provisions of secs. 85 to 88 of the Local Government Act, 1894 (56 & 57 Vict., c. 73), which, with the exception of sub-secs. 4 and 5 of sec. 85, and subject to the adaptations made by this rule, apply to transfers mentioned in this schedule, are as follows :—

85.—(1.) Every rate and precept for contributions made before the appointed day may be assessed, levied, and collected, and proceedings for the enforcement thereof taken, in like manner as nearly as may be as if this Act had not passed.

(2.) The accounts of all receipts and expenditure before the appointed day shall be audited, and disallowances, surcharges, and penalties recovered and enforced, and other consequential proceedings had, in like manner as nearly as may be as if this Act had not passed, but as soon as practicable after the appointed day ; and every authority, committee, or officer whose duty it is to make up any accounts, or to account for any portion of the receipts or expenditure in any account, shall, until the audit is completed, be deemed for the purpose of such audit to continue in office, and be bound to perform the same duties and render the same accounts and be subject to the same liabilities as before the appointed day.

(3.) All proceedings, legal and other, commenced before the appointed day, may be carried on in like manner, as nearly as may be, as if this Act had not passed, and any such legal proceeding may be amended in such manner as may appear necessary or proper in order to bring it into conformity with the provisions of this Act. . . .

86.—(1.) Nothing in this Act shall prejudicially affect any securities granted before the passing of this Act on the credit of any rate or property transferred to a council or parish meeting by this Act ; and all such securities, as well as all unsecured debts, liabilities, and

obligations incurred by any authority in the exercise of any powers or in relation to any property transferred from them to a council or parish meeting shall be discharged, paid, and satisfied by that council or parish meeting, and where for that purpose it is necessary to continue the levy of any rate or the exercise of any power which would have existed but for this Act, that rate may continue to be levied and that power to be exercised either by the authority who otherwise would have levied or exercised the same, or by the transferee as the case may require.

(2.) It shall be the duty of every authority whose powers, duties, and liabilities are transferred by this Act to liquidate so far as practicable before the appointed day, all current debts and liabilities incurred by such authority.

87. All such byelaws, orders, and regulations of any authority, whose powers and duties are transferred by this Act to any council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if made by that council, and may be revoked or altered accordingly.

88.—(1.) If at the time when any powers, duties, liabilities, debts, or property are by this Act transferred to a council or parish meeting, any action or proceeding, or any cause of action or proceeding, is pending or existing by or against any authority in relation thereto, the same shall not be in anywise prejudicially affected by the passing of this Act, but may be continued, prosecuted, and enforced by or against the council or parish meeting as successors of the said authority in like manner as if this Act had not been passed.

(2.) All contracts, deeds, bonds, agreements, and other instruments subsisting at the time of the transfer in this section mentioned, and affecting any of such powers, duties, liabilities, debts, or property, shall be of as full force and effect against or in favour of the council or parish meeting, and may be enforced as fully and effectually as if, instead of the authority, the council or parish meeting had been a party thereto.

(9.) The disqualification of any persons who are, at the time of the passing of this Act, members of any council, and who will become disqualified for office in consequence of this Act, shall not, if the council so resolve, take effect until a day fixed by the resolution, not being later than the next ordinary day of retirement of councillors in the case of a county council, the next ordinary day of election of councillors in the case of the council of a borough, and the fifteenth day of April in the year nineteen hundred and four in the case of an urban district council.

As to persons who by reason of holding an office or place of profit or having a share or interest in a contract or employment are disqualified for being members of the council and consequently, with certain exceptions, are disqualified for being members of the education committee appointed by the council, see sec. 17 (4) and notes thereon. It will be observed that a formal resolution must be passed if it is desired by the council that the disqualification in the case of any person to whom the provision applies should be temporarily removed, and that the day to which the saving shall continue to have effect

must be fixed by the resolution, such day not being later than that applicable to the case under this rule.

(10.) No election of members of a school board shall be held after the passing of this Act, and the term of office of members of any school board holding office at the passing of this Act, or appointed to fill casual vacancies after that date, shall continue to the appointed day, and the Board of Education may make orders with respect to any matter which it appears to them necessary or expedient to deal with for the purpose of carrying this provision into effect, and any order so made shall operate as if enacted in this Act.

The Board of Education, in a circular letter dated the 2nd January, 1903, state that "no further triennial elections of school boards are to be held, and the term of office of existing members of school boards, or of members hereafter appointed to fill casual vacancies, will continue until the day appointed for the Act to come into operation." (As to the "appointed day," see sec. 27.) "Casual vacancies should continue to be filled in the manner directed by the Third Schedule to the Elementary Education Act, 1876" (39 & 40 Vict., c. 79), "and all such changes should be notified to the Board of Education as heretofore."

(11.) Where required for the purpose of bringing the accounts of a school to a close before the end of the financial year of the school, or for the purpose of meeting any change consequent on this Act, the Board of Education may calculate any parliamentary grant in respect of any month or other period less than a year, and may pay any parliamentary grant which has accrued before the appointed day at such times and in such manner as they think fit.

See notes on Rule 12.

(12.) Any parliamentary grant payable to a public elementary school not provided by a school board in respect of a period before the appointed day shall be paid to the persons who were managers of the school immediately before that day, and shall be applied by them in payment of the outstanding liabilities on account of the school, and so far as not required for that purpose shall be paid to the persons who are managers of the school for the purposes of this Act and shall be applied by them for the purposes for which provision is to be made under this Act by those managers, or for the benefit of any general fund applicable for those purposes; Provided that the Board of Education may, if they think fit, pay any share of the aid grant under the Voluntary Schools Act, 1897, allotted to an association of voluntary schools, to the governing body of that association, if such governing body satisfy the Board of Education that proper arrangements have been made for the application of any sum so paid.

As to schools which are to be treated as provided by the local education authority, see Rule 13 and notes thereon.

The "appointed day" is that referred to in sec. 27.

With regard to the purposes for which provision is to be made under the Act by managers of a public elementary school not provided by the local education authority, see sec. 7 (1) (*d*) and (2).

The parliamentary grants referred to in this rule include the grants under the Voluntary Schools Act, 1897, the grants under that Act being payable up to the "appointed day."

The parliamentary grants payable in respect of a period before the "appointed day" will be paid to the managers, or if the Board of Education think fit in the case of the aid grant under the Voluntary Schools Act, 1897, to the governing body of the Association of Voluntary Schools under that Act. The grants received must be applied by them in accordance with the requirement of this rule.

The managers of schools not provided by the local education authority will be allowed to appropriate the credit balances they may have in hand on the "appointed day," and which are not required for meeting liabilities, to the purposes for which the managers have under the Act to make provision.

With regard to the arrangements which the Board of Education have made for the payment of grants, see note to sec. 18.

See also the letter (in Appendix, p. 688) which the Board of Education have addressed to the governing bodies of associations of voluntary schools. The Board suggest that these governing bodies can best render assistance to the managers of schools not provided by the local education authority by undertaking the administration of a common fund, of which the sums received from the aid grant in respect of a period before the "appointed day" would form the nucleus, and in which managers could invest or deposit any further sums which may from time to time come into their possession. By these means a mutual insurance fund would be created, upon which the managers of individual schools could depend for assistance towards the expense of such repairs and alterations as they may be called upon from time to time to carry out.

(13.) Any school which has been provided by a school board or is deemed to have been so provided shall be treated for the purposes of the Elementary Education Acts, 1870 to 1900, and this Act, as a school which has been provided by the local education authority, or which is deemed to have been so provided, as the case may be.

Schools which have been provided by a school board, as well as schools which may be provided by the local education authority, are to be treated for the purposes of the Elementary Education Acts and this Act as schools which have been provided by the local education authority.

Schools which have been transferred to school boards by the managers under sec. 23 of the 33 & 34 Vict., c. 75, *post*, were, to such extent and during such time as the school board had, under the terms of an arrangement under that section, any control over the schools, to be deemed to be schools provided by the school board.

Under sec. 13 of the Elementary Education Act, 1873 (36 & 37 Vict., c. 86, *post*), it was provided that every school connected with an

endowment, charity, or trust, of which the school board were constituted trustees, should be deemed to be a school provided by the school board.

Schools which have been so transferred by managers or which have been connected with an endowment, charity, or trust, of which the school board were trustees, are also to be deemed to be schools provided by the local education authority.

(14.) The local education authority shall be entitled to use for the purposes of the school any school furniture and apparatus belonging to the trustees or managers of any public elementary school not provided by a school board, and in use for the purposes of the school before the appointed day.

With regard to the "appointed day," see sec. 27, and for definition of public elementary school, see note on sec. 6. As to schools to be treated as provided by the local education authority, see Rule 13 in this schedule.

See also the provision in sec. 7 (2) as to the use by the managers of the school furniture out of school hours.

(15.) During the period between the passing of this Act and the appointed day, the managers of any public elementary school, whether provided by a school board or not, and any school attendance committee, shall furnish to the council, which will on the appointed day become the local education authority, such information as that council may reasonably require.

It is obviously necessary that an authority which on the "appointed day" will become the local education authority should be furnished by the managers of public elementary schools with such information as may be reasonably required, in order that they may be in a position to consider the arrangements which should be made to take effect from and after the "appointed day." The school board are the managers of a school provided by them.

(16.) The officers of any authority whose property, rights, and liabilities are transferred under this Act to any council shall be transferred to and become the officers of that council, but that council may abolish the office of any such officer whose office they deem unnecessary.

The officers of school boards and of school attendance committees, whether the committees were appointed by the councils of boroughs, or of urban districts other than boroughs, or by boards of guardians come within the provisions of this rule. The officers of school authorities under the Elementary Education (Blind and Deaf Children) Act, 1893, *post*, and the Elementary Education (Defective and Epileptic Children) Act, 1899, *post*, when the property rights and liabilities of these authorities are transferred under Rule 7 to the county council also come within the rule. When the council of a non-county borough or of an urban district have appointed officers for the purposes of the Technical Instruction Acts, and the council under sec. 20 (b) of this Act relinquish in favour of the county council

their powers of supplying or aiding the supply of education other than elementary, the officers so appointed would appear to come within the rule, as in that case also the property rights and liabilities of the council are under Rule 2 transferred to the county council.

The county governing bodies under the Welsh Intermediate Education Act, 1889, will cease to exist, and their powers, duties, property, and liabilities are to be transferred to the local education authorities. See sec. 17 (8).

Voluntary schools are not transferred to the local education authority, and as the officers of these schools are not officers of an authority whose property, rights, and liabilities are transferred under the Act to any council, they are not within the terms of the rule. The Act does not invalidate any existing contracts between teachers in voluntary schools and the managers of those schools.

With regard to the term "officers," *Legge and others v. the Vestry of the Parish of Stoke Newington* (Times, 28th May, 1895) may be referred to. In that case the question arose as to the claim to compensation of certain persons under the 56 & 57 Vict., c. 55 (Metropolis Management (Plumstead and Hackney) Act, 1893), which, by sec. 11, provided that every "officer" who, in consequence of that Act, suffered any pecuniary loss by abolition of office, or by diminution or loss of salary or emoluments, should be entitled to have pecuniary compensation for such pecuniary loss paid to him. In that case it was held by Mr. Justice Day that the intention of the Act was that the permanent servants of the vestry who would be pecuniarily affected by the Act to their detriment should be compensated, and that the plaintiffs, who included the sanitary inspectors, the clerk to the sanitary committee, the hall porter, a messenger, and an office boy, all came within the section.

See also *R. v. Local Government Board* (L. R. 9 Q. B. 148; 43 L. J. Q. B. 49; 29 L. T., N. S., 769; 22 W. R. 315; 38 J. P. 165), which had reference to a solicitor appointed at an annual salary by trustees having the management of the relief of the poor. It was held that the word "office," in its strict legal meaning, would not include such an office as this; but to give the word its strict legal sense would be to render the Act nugatory, and that the words of the Act must be construed with reference to the subject-matter and the context.

It would appear from the case of *Foley v. The Mayor, Aldermen, &c., of the Borough of Battersea* (Times, March 13, 1902), that the office of an officer may be abolished, although arrangements to secure the results which were obtained by the services of the officer may still be necessary, the arrangements proposed being of a different character. In that case the plaintiff, who had been a collector of rates, brought an action to recover 75*l.* as arrears of salary. It appeared that the plaintiff was in office as collector of rates on the 1st of November, 1900, the appointed day under the London Government Act, 1899, and continued to hold that office until March, 1901, when the council of the borough gave him notice that his office as collector of rates had been abolished by them. For the plaintiff it was contended that his office was not abolished, as the council immediately afterwards appointed other persons to collect the rates. For the borough council it was stated that when the powers of the overseers were, under the London Government Act, vested in the council of the borough, they considered what arrangements should be made with regard to the rate-collection. At that time there were six rate-collectors, who were receiving large salaries, and also eleven clerks

to keep the books, the cost amounting to 2800*l.* a year. A new scheme was arranged, under which there were eleven clerks, who delivered demand notes and received the rates in the office, this change resulting in a saving of nearly 1500*l.* a year. It was in consequence of this proposed new arrangement that the office of the plaintiff was abolished. His office had been abolished, and therefore he was not entitled to salary. Judgment was given for the defendants. Wright, J., said that it was clear that, under the London Government Act, there was the discretion given to the council of a borough to abolish an office, so long as they acted *bond fide* and deemed the office unnecessary. It was not suggested that the council had acted in this matter *malâ fide*. The council were no doubt right in thinking that the change which was made was expedient, as it was a substantial economy, and, under the circumstances, he thought that the council might consider that the old officers were unnecessary and might appoint other servants to do similar duties under the control of the town clerk, and therefore abolish the offices of the persons who had previously been acting as collectors. The action failed, but the plaintiff was entitled to compensation for loss of office.

When the office of an officer is abolished, and he is entitled by reason of that abolition to compensation for loss of office, he cannot recover damages for the determination of his appointment without the notice required by the terms of his contract. See *Clarke v. Mayor, &c., of the Borough of Lewisham* (19 Times Law Rep. 62). In that case it appeared that the plaintiff, who had held the office of Secretary of the Lewisham District Board of Works, was entitled under the terms of his contract with them to three months' notice to determine his employment. The powers of the district board were by the London Government Act, 1899, transferred to the council of the borough of Lewisham. The plaintiff was transferred to the council, and they, acting under the powers conferred on them by the Act, abolished his office, giving him one week's notice, and this action was brought by him for wrongful dismissal. After the abolition of the office of the plaintiff he was awarded an annuity as compensation for loss of office. For the defendants objection was taken that the action was out of time by operation of sec. 1 (a) of the Public Authorities Protection Act, 1893, as it was not brought within six months from the act complained of, but the objection was overruled on the ground that the enactment did not apply to actions for damages for breach of contract. Mr. Justice Bigham said that under sec. 30 of the Act the defendants had power to abolish any office which they deemed unnecessary, but an officer whose office was abolished was entitled to compensation under sec. 120 of the Local Government Act, 1888, which was incorporated by reference into sec. 30 of the London Government Act in respect of any direct pecuniary loss resulting from the abolition. By sec. 30 of that Act a statutory alteration was made in the contract with the plaintiff which enabled the defendants to put an end to the contract at once, the compensation being supposed to be amply sufficient. The plaintiff had received, or ought to have received, compensation for the very loss claimed in the action. Judgment was accordingly given for the defendants.

As to the provisions which apply to a transferred officer, see Rule 17; and as to the compensation payable when the office of the officer is abolished, see Rules 17, 18, and 21.

(17.) Every officer so transferred shall hold his office by the

same tenure and on the same terms and conditions as before the transfer, and while performing the same duties shall receive not less salary or remuneration than theretofore, but if any such officer is required to perform duties which are not analogous to or which are an unreasonable addition to those which he is required to perform at the date of the transfer, he may relinquish his office, and any officer who so relinquishes his office, or whose office is abolished, shall be entitled to compensation under this Act.

An officer who is transferred to the local education authority from another authority will hold his office by the same tenure and on the same terms and conditions as those on which he held the office from which he is transferred, and whilst performing the same duties is to receive not less salary or remuneration than he previously received. If the officer relinquishes his office of his own free will while being called upon to perform the same or analogous duties he will have no claim to compensation, but must give whatever notice was necessary to determine the appointment as if no transfer had taken place. But if he is called upon to perform duties which are not analogous to or are an unreasonable addition to those which he is required to perform at the date of the transfer, he may relinquish his office, in which case he will be entitled to compensation.

As regards cases where it has been the practice from time to time to re-appoint an officer, see *Q. v. Mayor, &c., of Norwich* (8 A. and E. 633). In that case the steward of a borough removed from office under the 5 & 6 Wm. 4, c. 76, demanded compensation under sec. 66 of that Act as for an office held for life. The town council, however, declared that the office was only annual. The Lords of the Treasury on appeal after hearing the parties awarded compensation on the principle that the office was held for life. On motion for a *mandamus* to the corporation to execute a compensation bond there were affidavits that at certain meetings of the corporation held annually on the 3rd of May the steward was elected, and was considered to be appointed until the next 3rd of May. Entries in the corporation book were also referred to showing appointments made for a year, and it appeared that from the time of Queen Anne re-appointments of the steward from year to year had been made. It was admitted by the town council that whatever might have been the legal right of the corporation it was not exercised, and no instance was attempted to be shown of the steward having been removed from office or ceasing to hold it except with his own consent. The rule for a *mandamus* was made absolute, Lord Denman, C.J., saying that the judgment of the Lords Commissioners of the Treasury was the same in effect as if they had said, "We do not find that there is a legal tenure of office for life, but there is an interest equivalent to that," and they grant compensation accordingly. I am of opinion that their decision was right.

As to the provisions which apply to compensation when the office of an officer is abolished or it is relinquished by him on the ground that he is required to perform duties which are not analogous to or which are an unreasonable addition to those which he was required to perform at the date of transfer, see Rules 18 and 21.

(18.) A council may, if they think fit, take into account continuous service under any school boards or school attendance

committees in order to calculate the total period of service of any officer entitled to compensation under this Act.

Under this rule it is within the discretion of the local education authority whether they will or will not take into account in calculating the total period of service of an officer for the purpose of determining the amount of his compensation under sec. 17 continuous service under school boards or school attendance committees when he has held office under more than one authority.

(19.) If an officer of any authority to which the Poor Law Officers' Superannuation Act, 1896, applies is under this Act transferred to any council, and has made the annual contributions required to be made under that Act, the provisions of that Act shall apply, subject to such modifications as the Local Government Board may by order direct for the purpose of making that Act applicable to the case.

This rule is to meet the case of an officer who held at the time of transfer an office to which the Poor Law Officers' Superannuation Act, 1896, applied, and who is transferred to an office which is not within the terms of that Act. The provisions of the Poor Law Officers' Superannuation Act, subject to such modifications as the Local Government Board may by order direct, are to continue applicable to the officer notwithstanding the transfer.

(20.) Any local education authority who have established any pension scheme, or scheme for the superannuation of their officers, may admit to the benefits of that scheme any officers transferred under this Act on such terms and conditions as they think fit.

In the case of the following boroughs and urban districts pension schemes or schemes for the superannuation of officers have been authorized by local Acts :—Barrow-in-Furness, Birmingham, Bolton, Bootle, Burton-on-Trent, Cardiff, Coventry, Croydon, East Ham, Halifax, Hastings, Leicester, Liverpool, Manchester, Margate, St. Helen's, Smethwick, Southport, South Shields, Wallasey, Warrington, West Bromwich, and Wigan.

The provision in this rule will meet, for instance, the case of an officer of the school board of a county borough who is transferred to the council of the borough as a local education authority, when a pension scheme or scheme for the superannuation of the officers of the council has been established.

The London School Board are the only school board which established a pension scheme for their officers. See provisions in Act of the session of 1902 obtained by the school board (2 Edw. 7, c. xxxvi.).

(21.) Section one hundred and twenty of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply also respects officers transferred under this Act, and also (with the necessary modifications) to any other officers who, by virtue of this Act or anything done in pursuance or in consequence

of this Act, suffer direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, in like manner as it applies to officers transferred under this Act, subject as follows :—

- (a) Any reference in that section to the county council shall include a reference to a borough or urban district council ; and
- (b) References in that section to “ the passing of this Act ” shall be construed, as respects a case of relinquishment of powers and duties, as references to the date on which the relinquishment takes effect ; and
- (c) Any reference to powers transferred shall be construed as a reference to property transferred ; and
- (d) Any expenses shall be paid out of the fund or rate out of which the expenses of a council under this Act are paid, and, if any compensation is payable otherwise than by way of an annual sum, the payment of that compensation shall be a purpose for which a council may borrow for the purposes of this Act.

This rule, it will be observed, refers not only to officers transferred under the Act, but also to any other officers who by virtue of the Act or anything done in pursuance or in consequence of the Act suffer direct pecuniary loss by abolition of office or by diminution or loss of fees or salary.

It is the duty of the local education authority in fixing the compensation to have regard “ to the conditions on which the appointment of the officer was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of the Act, or of anything done in pursuance of or in consequence of the Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under the Act, and to all the other circumstances of the case.” There is also the additional condition that the amount “ shall not exceed the amount which, under the Acts and rules relating to Her Majesty’s Civil Service, is paid to a person on abolition of office.”

Rex v. Mayor, &c., of Stepney (1902), 1 K. B. 317 ; L. J. 71 K. B. 238 ; 64 L. T. 21, came before the High Court (Lord Alverstone, L.C.J., and Darling and Channell, JJ.) on a rule *nisi* to show cause why a *mandamus* should not issue directed to the Mayor, &c., of the Metropolitan Borough of Stepney, ordering them to assess the compensation due to the applicant owing to the abolition of his office under the London Government Act, 1899. The applicant was a solicitor who since 1872 had filled the office of Clerk to the vestry of Mile End. By the London Government Act, 1899, the powers of the vestry were transferred to the corporation of Stepney, and his office was abolished by the corporation under the powers conferred on them by that Act. The applicant whilst holding the office referred to had also carried on his private practice as a solicitor. He made his claim for compensation for loss of office, and it was referred to the finance committee of the corporation. The finance committee made inquiries at the Treasury as to their practice in the assessment

of such compensations. In reply to their inquiries the Treasury stated that the practice under the Local Government Acts, 1888 and 1894, was to calculate the compensation of an officer, the whole of whose time had not been devoted to his office as though his whole time had been so devoted, but to deduct one quarter of the amount thus arrived at. The result of these inquiries was reported by the finance committee, and they also reported that they were advised that the corporation were bound by the practice of the Treasury. The report of the finance committee was adopted by the corporation, and the compensation was assessed according to the Treasury practice. The applicant contended that the corporation were not so bound, and that if they acted simply on such practice they would not be inquiring into all the circumstances as they were bound to do in fulfilment of the statutory duty imposed on them by the Local Government Act, 1888. It was admitted that there were no Acts or statutory rules which affected the matter. The rule was made absolute. The Lord Chief Justice said—On the materials before us it is clear that the local authority have not acted in accordance with any statutory rule, but inquired as to the practice which is applied by the Treasury. The practice which appears to be applied—I have no doubt properly applied—in most cases, is that there is a deduction of 25 per cent. If there were any evidence before us that the borough council had themselves thought that 25 per cent. was the right deduction, or had exercised a discretion in the matter, I should not be a party to making the rule absolute; but in this case, as they have acted upon something which I do not think is binding upon them, and they have not really exercised their discretion, I think that they ought to be ordered to entertain the case, having regard to the circumstances, before any question of the alternative remedy by appeal to the Treasury arises.

With regard to the question as to what may be regarded as emoluments the cases of *R. v. The Mayor, Aldermen, &c., of the Borough of Bridgewater* (6 A. and E. 339; *R. v. The Local Government Board* (L. R. 6 Q. B. 785; 41 L. J. M. C. 16; 25 L. T. 304); and *R. v. Postmaster-General* (L. R. 3 Q. B. D. 428; 47 L. J. Q. B. 435; 38 L. T. 89; 26 W. R. 322), may be referred to.

In the case of *R. v. Mayor, Aldermen, &c., of the Borough of Bridgewater* it appeared that before and until the passing of the 5 & 6 Will. 4, c. 76, T. was the common clerk, prothonotary, and clerk of the peace, of the Borough of Bridgewater, during good behaviour, and he acted as clerk to the justices of the borough, as by usage the common clerk had always done, either, as T. alleged, incidentally to the office of common clerk, or, as was alleged in answer, by appointment of the justices. It was held by the Court (Lord Denman, C.J., and Williams and Coleridge, JJ.) that the remuneration received by him as clerk to the justices should be considered in fixing the compensation, the common clerk having lost perquisites and emoluments which were previously attached to his office.

In *R. v. The Local Government Board*, the clerk to the guardians of a union, who was also a solicitor, was, by the dissolution of the union, deprived of his office of clerk. The 30 & 31 Vict., c. 106, sec. 20, enacted that, "when any union shall be dissolved, if any person shall by means of such dissolution be deprived of any office or employment, the Poor Law Board may, according to their judgment, award a compensation to be paid to such person." Compensation was awarded to the clerk accordingly. One of the items taken into

consideration in fixing the amount of the compensation was as follows: "Professional charges connected with the proceedings against the Metropolitan Railway Company for recovering compensation for property belonging to the guardians and not covered by the salary, 169*l*." A rule was obtained on behalf of the guardians of the City of London Union, to show cause why a writ of *certiorari* should not issue to remove into the Court the order by which this compensation was fixed. It was argued that, supposing the clerk had been entitled to charge for the services in question, they were in no way incident to his office of clerk. He need not have been employed for this legal business, though he held the office of clerk, and he might have been employed though he had never held that office. The Court (Blackburn and Montagu Smith, JJ.) held that the rule must be discharged. Blackburn, J.: "The question arises whether the Poor Law Board, in assessing compensation, were tied down to those things which were strictly legally attached to the office, or whether they might say that the office was worth so much more because of the goodwill annexed to it. The guardians might have taken away this employment, but might not the Poor Law Board look to the probability of its continuance? By analogy to the compensation under the Lands Clauses Acts, I think the goodwill of the office of clerk to the guardians might be taken into account." Mellor, J.: "This business relating to the compensation to the guardians was not part of the ordinary business of their clerk, but was independent of, though arising out of, his office as clerk. In the assessment of the damages he had suffered by the loss of his office in respect of which he was to be compensated, I think the Board were right in taking that matter into their consideration, as being kindred to the office. It was, I think, within the purview of the statute, as being business incident, not to his office as attorney, but as attorney and clerk to the guardians."

In *R. v. The Postmaster-General*, an officer of a telegraph company whose undertaking was transferred to the Postmaster-General, was entitled, if the appointment was determined, to an annuity by way of compensation for loss of office equal to a certain proportion of the annual emoluments derived by him from his office. It was part of the duty of the officer, when required, to travel on the company's business. When he so travelled, his ordinary salary ran on, but his additional expenses were paid by the company, who agreed that he should receive certain fixed weekly sums in lieu of making him bring in an account of his expenditure and then repaying it. It was claimed by the officer that the amount saved by him out of the sums so paid for travelling expenses was to be taken into consideration in calculating the annual emolument derived by him from his office. The Court held, affirming the decision of the Queen's Bench Division, that the sums so saved should be taken into consideration in fixing the amount of the compensation. Bramwell, L.J., said, "The question is, What was the annual emolument of the officer? A portion of it was what he could save out of the allowance made to him during the time of his absence from home. The Legislature could not have used a word more comprehensive, and the reasonable construction of the statute requires that it should be extended to a case like the present. What was the office worth to the officer? It was worth so much in salary and so much in profit made out of allowances, made not surreptitiously or wrongly."

Sec. 120 of the Local Government Act, 1888, the provisions of which

with the adaptations referred to in the rule are made applicable to compensation in the cases mentioned is as follows :—

120.—(1.) Every existing officer declared by this Act to be entitled to compensation, and every other existing officer, whether before mentioned in this Act or not, who by virtue of this Act, or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of the authority, whose officer he was, are transferred under this Act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to Her Majesty's Civil Service, is paid to a person on abolition of office.

(2.) Every person who is entitled to compensation, as above mentioned, shall deliver to the county council a claim under his hand setting forth the whole amount received and expended by him or his predecessors in office, in every year during the period of five years next before the passing of this Act, on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declaration Act, 1835, that the same is a true statement according to the best of his knowledge, information, and belief.

(3.) Such statement shall be submitted to the county council, who shall forthwith take the same into consideration, and assess the just amount of compensation (if any), and shall forthwith inform the claimant of their decision.

(4.) If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one-third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may, within three months after the decision of the council, appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so, what amount ought to be granted to the claimant, and such determination shall be final.

(5.) Any claimant under this section, if so required by any member of the county council, shall attend at a meeting of the council and answer upon oath, which any justice present may administer, all questions asked by any member of the council touching the matters set forth in his claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.

(6.) The sum payable as compensation to any person in pursuance of this section shall commence to be payable at the date fixed by the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a specialty debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same.

(7.) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other county council, or by virtue of this Act, or anything done in pursuance of or in consequence of this Act, receives any increase of emoluments of the office held by him, he shall not, while receiving the emoluments of that office, receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds such office.

(8.) All expenses incurred by a county council in pursuance of this section shall be paid out of the county fund, as a payment for general county purposes.

As to the fund or rate out of which the expenses of a council under this Act are to be paid, see sec. 18.

The *Rules of the Treasury* as to compensation to civil servants on abolition of office are as follows :—

The award of compensation allowances to established civil servants on the abolition of their offices is regulated by sec. 7 of the Superannuation Act of 1859, which provides that :—

“ It shall be lawful for the Commissioners of the Treasury to grant to any person retiring or removed from the public service in consequence of the abolition of his office, or for the purpose of facilitating improvements in the organization of the department to which he belongs, by which greater efficiency and economy can be effected, such special annual allowance by way of compensation as, on a full consideration of the circumstances of the case, may seem to the said commissioners to be a reasonable and just compensation for the loss of office ; and if the compensation shall exceed the amount to which such person would have been entitled under the Scale of Superannuation provided by this Act, if ten years were added to the number of years which he may have actually served, such allowance shall be granted by special minute, stating the special grounds for granting such allowance, which minute shall be laid before Parliament, and no such allowance shall exceed two-thirds of the salary and emoluments of the office.”

In calculating allowances under this section, it is the practice of the Treasury to award as many sixtieths of the officer's emoluments as he has served complete years, with a special addition, on account of abolition of office, not exceeding the following scale, viz. :—

Actual Service.				Addition.	
20 years or upwards	...	...	...	10	00
15 „ and less than 20	...	...	...	6	00
10 „ and less than 15	...	...	...	6	00
5 „ and less than 10	...	...	...	3	00
Under 5 „	...	...	...	1	00

When the duties of the situation have not been such as to require that the holder should give his whole time to the public service, such deduction is made from the amount of compensation allowance for which he would otherwise be qualified as the Treasury may consider reasonable. As a rule, the deduction is one-fourth of the whole.

It must be observed that all awards under the section are at the

absolute discretion of the Treasury, and are subject to modification if the Board consider that the circumstances of the particular case require it.

(22.) Section sixty-eight of the Local Government Act, 1894 (which relates to the adjustment of property and liabilities), shall apply with respect to any adjustment required for the purposes of this Act.

Sec. 68 of the Local Government Act, 1894, provides as follows :—

68—(1.) Where any adjustment is required for the purpose of this Act, or of any order, or thing made or done under this Act, then, if the adjustment is not otherwise made, the authorities interested may make agreements for the purpose, and may thereby adjust any property, income, debts, liabilities, and expenses, so far as affected by this Act, or such scheme, order, or thing, of the parties of the agreement.

(2.) The agreement may provide for the transfer or retention of any property, debts, or liabilities, with or without any conditions, and for the joint use of any property, and for payment by either party to the agreement in respect of property, debts, and liabilities so transferred or retained, or of such joint user, and in respect of the salary or remuneration of any officer or person, and that either by way of an annual payment or, except in the case of a salary or remuneration, by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the Local Government Board : Provided that where any of the authorities interested is a board of guardians, any such agreement, so far as it relates to the joint use of any property, shall be subject to the approval of the Local Government Board.

(3.) In default of an agreement, and as far as any such agreement does not extend, such adjustment shall be referred to arbitration in accordance with the Arbitration Act, 1889, and the arbitrator shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily, and his award may provide for any matter for which an agreement might have provided.

(4.) Any sum required to be paid by any authority for the purpose of adjustment may be paid as part of the general expenses of exercising their duties under this Act, or out of such special fund as the authority, with the approval of the Local Government Board, direct, and if it is a capital sum the payment thereof shall be a purpose for which the authority may borrow under the Acts relating to such authority, on the security of all or any of the funds, rates, and revenues of the authority, and any such sum may be borrowed without the consent of any authority, so that it be repaid within such period as the Local Government Board may sanction.

(5.) Any capital sum paid to any authority for the purpose of any adjustment under this Act shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

In connection with adjustments, the case of *The Llanwonno School Board v. The Ystradyfodwg School Board* (62 J. P. 644) may be referred to. The case came before the Court on a special case stated

by an arbitrator. It appeared that by an order of the county council of Glamorgan made in June, 1894, and confirmed, with certain modifications, by an order of the Local Government Board dated November 21, 1894, a part of the parish of Llanwonno was transferred to the parish of Ystradyfodwg. In that part there were certain schools called the Porth Schools, which up to that time had been vested in the Llanwonno school board, and by virtue of the order referred to became vested in the Ystradyfodwg school board. In 1888 and subsequent years additions and alterations had been made in the school premises. The cost of these works was paid out of revenue, with the aid of an increased rate on the whole parish of Llanwonno, before the date of the order of transference. The Llanwonno school board claimed to be paid a proportionate part of the cost of these additions and alterations, and the question for the Court was whether there was anything in this matter for the arbitrator to consider. The Local Government Board order contained the following provisions:— Article II. "From and after the day when any part of any existing parish ceases, in pursuance of the order, to be within the district of the school board of such existing parish, the powers, duties, and liabilities of such school board in respect of such part of the existing parish shall cease and determine, and all buildings, with their fittings, being the property of such school board and situate within such part of the parish, shall be transferred to and shall vest in the school board of the parish in which such part is included by the order, and all contracts, liabilities, and engagements attaching to or incurred by the school board of the existing parish in respect of such buildings, or exclusively in respect of the said part of the existing parish, shall vest in and attach to and be enjoyed and discharged by the school board of the parish to which the said part of the existing parish is transferred." By article 13 of the order it was provided that any question "with regard to the interests" of the school boards in the schools should be dealt with in an adjustment under section 68 of the Local Government Act, 1894. For the Llanwonno school board it was argued that something should be paid to them for their outlay on the school. Clause 11 of the order did not provide that the Ystradyfodwg school board should have the school buildings without any payment in respect of them. For the latter school board it was said that the Llanwonno board had not incurred any expense by reason of the transfer, and that as the fact that ten years ago they had spent money on enlarging the school out of their income did not give them any claim, there was nothing on which to arbitrate. The Court (Ridley and Channell, JJ.), without laying down any principle for the arbitrator, held that there was something to be adjusted. An adjustment might have been made by the order, but this was not done, and article 13 of the order showed that there was no intention by that order to make an adjustment of the interests.

THIRD SCHEDULE.

MODIFICATION OF ACTS, &c.

(1.) References to school boards and school districts shall be construed as references to local education authorities and the areas for which they act, except as respects transactions before the appointed day, and except that in paragraph (2) of section nineteen of the Elementary Education Act, 1876, and in subsection (1) of section two of the Education Code (1890) Act, 1890, references to a school district shall, as respects the area of a local education authority being the council of a county, be construed as references to a parish.

(2.) References to the school fund or local rate shall be construed as references to the fund or rate out of which the expenses of the local education authority are payable.

(3.) In section thirty-eight of the Elementary Education Act, 1876, references to members of a school board shall be construed as references to members of the education committee, or of any sub-committee appointed by that committee for school attendance purposes.

(4.) The power of making byelaws shall (where the local education authority is a county council) include a power of making different byelaws for different parts of the area of the authority.

(5.) The following provision shall have effect in lieu of section five of the Elementary Education Act, 1891 :

"The duty of a local education authority under the Education Acts, 1870 to 1902, to provide a sufficient amount of public school accommodation shall include the duty to provide a sufficient amount of public school accommodation without payment of fees in every part of their area."

(6.) The words "in the opinion of the Board of Education" shall be substituted for the words "in their opinion" in the first paragraph of section eighteen of the Elementary Education Act, 1870.

(7.) Section ninety-nine of the Elementary Education Act, 1870, shall apply to the fulfilment of any conditions, the performance of any duties, and the exercise of any powers under this Act as it applies to the fulfilment of conditions required in pursuance of that Act to be fulfilled in order to obtain a parliamentary grant.

(8.) A reference to the provisions of this Act as to borrowing shall be substituted in section fifteen of the Elementary Education Act, 1876, for the reference to section ten of the Elementary Education Act, 1873, and a reference to the Local Government Board shall be substituted for the second reference in that section to the Education Department, and also for the reference to the Education Department in section five of the Elementary Education (Blind and Deaf Children) Act, 1893.

(9.) A reference to the provisions of this Act relating to the enforcement of the performance of the local education authority's duties by mandamus shall be substituted in section two of the Elementary Education Act, 1880, for the reference to section twenty-seven of the Elementary Education Act, 1876.

(10.) The substitutions for school boards, school districts, school fund, and local rate made by this schedule shall, unless the context otherwise requires, be made in any enactment referring to or applying the Elementary Education Acts, 1870 to 1900, or any of them, so far as the reference or application extends.

(11.) References in any enactment or in any provision of a scheme made under the Charitable Trusts Acts, 1853 to 1894, or the Endowed Schools Acts, 1869 to 1889, or the Elementary Education Acts, 1870 to 1900, to any provisions of the Technical Instruction Acts, 1889 and 1891, or either of those Acts shall, unless the context otherwise requires, be construed as references to the provisions of Part II. of this Act, and the provisions of this Act shall apply with respect to any school, college, or hostel established, and to any obligation incurred, under the Technical Instruction Acts, 1889 and 1891, as if the school, college, or hostel had been established or the obligation incurred under Part II. of this Act.

(12.) The Local Government Board may, after consultation with the Board of Education, by order make such adaptations in the provisions of any local Act (including any Act to confirm a Provisional Order and any scheme under the Municipal Corporations Act, 1882, as amended by any subsequent Act) as may seem to them to be necessary to make those provisions conform with the provisions of this Act, and may also in like manner, on the application of any council who have power as to education under this Act and have also powers as to education under any local Act, make such modifications in the local Act as will enable the powers under that Act to be exercised as if they were powers under this Act.

Any order made under this provision shall operate as if enacted in this Act.

Rules 1 to 9.—The provisions in these rules are noted in connection with the sections to which reference is made.

Rule 11.—For provisions of Part II. of the Act, see secs. 2 to 4.

For definition of "college," see sec. 24 (4) ; and as to "h^ost^el," see note to sec. 2.

Rule 12.—The adaption and modification of local Acts, as defined by the rule, may be made by the Local Government Board by order, and the order will not require confirmation by Parliament as in the case of a provisional order.

FOURTH SCHEDULE.

Enactments Repealed.

PART I.

Session and Chapter	Short Title	Extent of Repeal.
52 & 53 Vict. c. 76.	The Technical Instruction Act, 1889.	The whole Act.
53 & 54 Vict. c. 60.	The Local Taxation (Customs and Excise) Act, 1890	In section one, sub-sections two and three.
54 & 55 Vict. c. 4.	The Technical Instruction Act, 1891.	The whole Act.

PART II.

Session and Chapter.	Short Title	Extent of Repeal
33 & 34 Vict. c. 75.	The Elementary Education Act, 1870.	Section four ; section five except so far as it defines public school accommodation ; section six ; sections eight to thirteen ; sections fifteen and sixteen ; section eighteen from " If at any " time " to the end of the section ; in section nineteen the words " whether in obedience " to any requisition or not " ; sections twenty-nine to thirty-four ; in section thirty-five the words " a clerk and a treasurer " and other " and the words from " but no such appointment " to " member of the

Session and Chapter.	Short Title.	Extent of Repeal.
		<p>"board"; sections forty to forty-eight; sections forty-nine to fifty-one; in section fifty-two the words "under the provisions of this Act with respect to the appointment of a body of managers"; sections fifty-three to fifty-six; sections sixty to sixty-six; in section sixty-nine the words "in the metropolis" and the words from "appointed under this Act" to "returns under this Act"; in section seventy-three the words "of the school district" the words from "(if any) or if" to "inquiry relates," and the words "or if there is no school board as a debt due from the rating authority"; sections seventy-seven and seventy-nine; sections eighty-seven, eighty-eight, and ninety; section ninety-three; the first proviso of section ninety-seven; the First Schedule; the Second Schedule, except the Third Part; the Third Schedule.</p>
36 & 37 Vict. c. 86.	The Elementary Education Act, 1873.	Sections five to twelve; sections seventeen and eighteen; sections twenty-one and twenty-six; the First Schedule; the Second Schedule; the Third Schedule.
37 & 38 Vict. c. 90.	The Elementary Education (Or- ders) Act, 1874.	The whole Act.
39 & 40 Vict. c. 79.	The Elementary Education Act, 1876.	<p>Section seven, from "and (2) in every" to "appointing the committee," and the words "and school attendance committee"; in section fifteen the words "not exceeding fifty"; section twenty-one; section twenty-three to "or pay any fees"; section twenty-seven; in section twenty-eight,</p>

Session and Chapter.	Short Title.	Extent of Repeal.
		the words "but subject in the case of a school attendance committee to the approval herein-after mentioned" and the words "or the officers of the council or guardians by whom the committee are appointed"; sections thirty, thirty-one, thirty-two, thirty-three (except as applied by this Act), and thirty-four; section thirty-six; in section thirty-seven the words "or local authority"; in section thirty-eight the words "or local authority" and "or school attendance committee"; sections forty-one, forty-two, forty-three, and forty-four; section forty-nine; the Second Schedule; the Third Schedule.
43 & 44 Vict. c. 23.	The Elementary Education Act, 1880.	Section three.
53 & 54 Vict. c. 22.	The Education Code (1890) Act, 1890.	Section one.
54 & 55 Vict. c. 56.	The Elementary Education Act, 1891.	Sections five, six, and seven.
56 & 57 Vict. c. 42.	The Elementary Education (Blind and Deaf Children) Act, 1893.	Section four from "(b) for an area" to the end of the section. Sub-sections (3) and (4) of section five. Section six.
59 & 60 Vict. c. 16.	The Agricultural Rates Act, 1896.	In section seven the words "a school board for a school district which is a parish or," and sub-section (3).
60 & 61 Vict. c. 5.	The Voluntary Schools Act, 1897.	Section one.
60 & 61 Vict. c. 16.	The Elementary Education Act, 1897.	The whole Act.

Session and Chapter.	Short Title.	Extent of Repeal.
62 & 63 Vict. c. 32.	The Elementary Education (Defective and Epileptic Children) Act, 1899.	In section six the proviso.
63 & 64 Vict. c. 53.	The Elementary Education Act, 1900.	Section three.

THE ELEMENTARY EDUCATION ACT, 1870.

(33 & 34 VICT., c. 75.)

AN ACT TO PROVIDE FOR PUBLIC ELEMENTARY
EDUCATION IN ENGLAND AND WALES.

[9th August, 1870]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: (that is to say)—

The following sections of this Act are the provisions which apply to England and Wales, with the exception of the Metropolis, from the "appointed day" under sec. 27 of the 2 Edw. 7, c. 42.

In connection with these sections it is to be born in mind—

(1) *That references in this Act to school boards and school districts are from the "appointed day" to be construed as references to Local Education Authorities and the areas for which they act (2 Edw. 7, c. 42, Third Schedule (1) ;*

(2) *That the Local Education Authorities throughout their area from the "appointed day" have the powers and duties of a school board and school attendance committee, and school boards and school attendance committees are abolished (2 Edw. 7, c. 42, sec. 5) . and*

(3) *That a Local Education Authority may delegate to the education committee with or without any restrictions or conditions as they think fit any of their powers except the power of raising a rate or borrowing money (2 Edw. 7, c. 42, sec. 17).*

PRELIMINARY.

Short Title.

1. This Act may be cited as the "Elementary Education Act, 1870."

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

Definition of Terms.

3. In this Act—

The term “metropolis” means the places for the time being within the jurisdiction of the Metropolitan Board of Works under the Metropolis Management Act, 1855: (1)

The term “borough” means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled “An Act to provide for the regulation of Municipal Corporations in England and Wales,” and the Acts amending the same: (2)

The term “parish” means a place for which for the time being a separate poor rate is or can be made: (3)

The term “person” includes a body corporate:

The term “Education Department” means “the Lords of the Committee of the Privy Council on Education”: (4)

The term “Her Majesty’s Inspectors” means the inspectors of schools appointed by Her Majesty on the recommendation of the Education Department:

The term “managers” includes all persons who have the management of any elementary school, whether the legal interest in the schoolhouse is or is not vested in them: (5)

The term “teacher” includes assistant teacher, pupil teacher, sewing mistress, and every person who forms part of the educational staff of a school:

The term “parent” includes guardian and every person who is liable to maintain or has the actual custody of any child: (6)

The term “elementary school” means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction, from each scholar, exceed ninepence a week: (7)

The term “schoolhouse” includes the teacher’s dwelling-house and the playground (if any) and the offices and all premises belonging to or required for a school:

The term “vestry” means the ratepayers of a parish meeting in vestry according to law:

The term “ratepayer” includes every person who, under the provisions of the Poor Rate Assessment and Collection Act, 1869, is deemed to be duly rated: (8)

The term "Parliamentary Grant" means a grant made in aid of an elementary school, either annually or otherwise, out of moneys provided by Parliament for the civil service, intituled "For Public Education in Great Britain."

(1) The term "metropolis" now means the places for the time being within the jurisdiction of the London County Council as the successors of the Metropolitan Board of Works. The metropolis, as thus defined, is conterminous with the administrative County of London.

(2) The word "borough," as defined, includes not only the several boroughs specified in Schedules A and B of the Municipal Corporations Act of 1835, but all municipal boroughs which have been incorporated since the passing of that Act. The Municipal Corporations Act, 1882 (45 & 46 Vict., c. 50), which repealed the Act of 1835, is now substituted for that Act. As to the Borough of Wenlock, see 37 & 38 Vict., c. 39, *post*.

(3) This interpretation has the effect of rendering every parish, township, parochial chapelry, hamlet, vill, precinct, or other place for which a separate poor rate is or can be made, a "parish" for the purposes of the Act. Divisions of a parish for ecclesiastical purposes only are not recognized by the Act.

(4) The Board of Education established under the Board of Education Act, 1899 (62 & 63 Vict., c. 33, *post*), takes the place of the Education Department, and sec. 2 of that Act provides that all enactments and documents shall be construed accordingly.

(5) As to managers of public elementary schools provided by a Local Education Authority and managers of public elementary schools not provided by a Local Education Authority, see sec. 6 (1), (2), and sec. 11 of 2 Edw. 7, c. 42, *ante*.

By sec. 11 (6) of the last-mentioned Act it is provided that the body of managers appointed under that Act for a public elementary school not provided by the Local Education Authority shall be the managers of that school for the purposes of that Act and the Elementary Education Acts.

Any school which has been provided by a School Board, or is deemed to have been so provided, is to be treated for the purposes of the Elementary Education Acts as a school which has been provided by the Local Education Authority, or which is deemed to have been so provided, as the case may be. See 2 Edw. 7, c. 42, Second Schedule (13), *ante*, and notes thereon.

(6) This definition includes the father and grandfather, and the mother and grandmother, of a child, as by the 43 Eliz., c. 2, sec. 7, they are liable to maintain the child if of sufficient ability. As to the case of a married woman having a child residing with her, during the absence of the husband from home, either by desertion or in pursuit of his lawful calling as a sailor or otherwise, see *Hance v. Burnett*, p. 272, *post*. See also *School Board for London v. Jackson*, p. 325, *post*.

(7) The expression "elementary school" does not include any school carried on as an evening school under the Regulations of the Board of Education (2 Edw. 7, c. 42, sec. 22 (1), *ante*).

To render an "elementary school" a "public elementary school" within the meaning of the Act, it must be conducted in accordance with the regulations prescribed by sec. 7, and the other conditions referred to in the notes on that section must be fulfilled.

By the Code of the Board of Education as to Day Schools (1902) it is provided as follows:—The "ordinary payment" for each scholar must cover all the instruction given in the school; and will, as a rule, be found by dividing the total amount of fees payable for any week, by the number of scholars on the registers for that week. But if more than one-third of the scholars pay fees exceeding ninepence a week the "ordinary payment" will be considered to exceed ninepence a week. The term "payments in respect of the instruction" means the fee payable by the parent, and does not include any payment for the purchase of books or other such articles. But a weekly or other periodical payment for the use of books or other school requisites, if required as a condition of admission to the school, is treated as a fee. Wherever the word "school" occurs in the Code it is to be held to include "department of a school," and for the purposes of the Code the Board have power to decide whether part of a school is or is not a department.

(8) The Poor Rate Assessment and Collection Act (32 & 33 Vict., c. 41), by sec. 19, enacts that the overseers in making out the poor rate shall in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupier's column of the rate book the name of the occupier of every rateable hereditament, and such occupier *shall be deemed to be duly rated*. In *Cress v. Alsep* (Law Rep., 6 C. P. 315; 40 L. J. C. P. 53; 23 L. T., N. S., 589), it was held in the Court of Common Pleas that the section quoted only applied to the occupiers of rateable hereditaments, in respect of which the owners had entered into agreements with the overseers to pay the rates instead of the occupiers, under sec. 3 of the Poor Rate Assessment and Collection Act, or in respect of which the owners were rated under an order of the vestry, under sec. 4 of that Act. In a later case (*Smith v. Overseers of Seghill*, Law Rep., 10 Q. B. 422; 44 L. J. M. C. 114; 32 L. T., N. S., 859), the Court of Queen's Bench held that the section applied to every case whether the rate was collected from the owner or occupier, and whether the owner or occupier was liable for the rate. Any doubt arising from these conflicting decisions was removed by sec. 14 of the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict., c. 26), which provides that the enactment referred to "shall not be deemed to apply exclusively to cases where an agreement has been made under sec. 3 of the Act, or where an order has been made under sec. 4 of the Act, but shall be of general application."

With regard to the entry in the rate book of the names of persons who become occupiers of tenements which were unoccupied at the time of the making of the rate, or who succeed other occupiers before the rate is wholly discharged, sec. 16 of the Poor Rate Assessment and Collection Act, 1869, enacts as follows:—"If the occupier assessed in the rate when made shall cease to occupy before the rate

shall have been wholly discharged, or if the hereditament being unoccupied at the time of the making of the rate is made occupied during the period for which the rate is made, the overseers shall enter in the rate book the name of the person who succeeds or comes into the occupation, as the case may be, and the date when such occupation commences, as far as the same shall be known to them; and such occupier shall thenceforth *be deemed to have been actually rated* from the date so entered by the overseers."

SUPPLY OF SCHOOLS.

School District to have sufficient Public Schools.

5. There shall be provided for every school district a sufficient amount of accommodation in public elementary schools (as hereinafter defined), available for all the children resident in such district for whose elementary education efficient and suitable provision is not otherwise made; and where there is an insufficient amount of such accommodation, in this Act referred to as "public school accommodation," the deficiency shall be supplied in manner provided by this Act.

This section is repealed by the 2 Edw. 7, c. 42, *ante*, except so far as it defines public school accommodation.

With regard to the provision by the Local Education Authority of additional school accommodation, see secs. 18 and 19.

The duty of a Local Education Authority under the Education Acts to provide a sufficient amount of public school accommodation includes the duty to provide a sufficient amount of public school accommodation without payment of fees in every part of their area [2 Edw. 7, c. 42, Third Schedule (5), *ante*].

As to the provision of new schools or the enlargement of schools, see secs. 8 and 9 of the 2 Edw. 7, c. 42, *ante*; and with respect to the powers of the Board of Education in the case of the failure of a Local Education Authority to provide such additional public school accommodation as is in the opinion of the Board of Education necessary, see sec. 16 of that Act.

As to the term "public elementary school," see sec. 7. "School district" is to be construed in this Act as referring to the area for which a Local Education Authority acts, except as regards transactions before the "appointed day" (2 Edw. 7, c. 42, Third Schedule (1)).

Schools, although not public elementary schools, may be certified by the Board of Education as efficient schools (see 39 & 40 Vict., c. 79, sec. 48, *post*).

With respect to the *proportion of the population of a parish for which school accommodation should be provided*, it is estimated as a general rule that the children of the class for which school places in elementary schools are required constitute one-sixth of the total population. That rule was acted upon for many years in cases where

building grants were made by the Education Department, and has generally been found practically accurate. The rule is of course subject to modifications in districts where the circumstances are exceptional, and the Board of Education, in determining whether there was "efficient and suitable provision" in a particular district within the meaning of this section, have been guided by the returns with which they have been furnished and the reports of their inspectors.

It was the rule of the Education Department to require suitable accommodation to be provided for children between the ages of three and five. Although such children are not subjects of compulsion under the bye-laws, annual grants are offered for them, and the Department, having regard to the short average duration of a child's school life, have attached great importance to their attendance.

The *accommodation* that will be *afforded by any particular school* is determined upon the report made by the inspector upon the school. The capacity of a schoolroom, and the number of children it can accommodate, depend not merely upon its area, but also on its shape, on the nature and arrangement of the school furniture, and on the positions of the doors and fireplaces. As to the *superficial area* and *cubic space* required for children in school premises, see Article 85 of the Day School Code in Appendix, p. 640.

The Board of Education have issued Rules to be observed in planning and fitting up Public Elementary Schools [1902, Cd. 1332], which may be obtained of Messrs. Eyre and Spottiswoode, East Harding Street, Fleet Street, E.C.

In the Rules referred to it is stated that "No school should ordinarily be built to accommodate more than 1000 to 1200 children in three departments. No single department should accommodate more than 400 children. A large school in three departments might conveniently be divided in the following proportions:—Boys 360, girls 360, infants 380."

As to school accommodation for blind and deaf children, see 56 & 57 Vict., c. 42, *post*; and for defective and epileptic children, see 62 & 63 Vict., c. 32, *post*.

Regulations for Conduct of Public Elementary School.

7. Every elementary school (1) which is conducted in accordance with the following regulations shall be a public elementary school within the meaning of this Act (2); and every public elementary school shall be conducted in accordance with the following regulations (a copy of which regulations shall be conspicuously put up in every such school), namely:—

- (1.) It shall not be required, as a condition of any child being admitted into or continuing in the school, that he shall attend or abstain from attending any Sunday school or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, from which observance or

instruction he may be withdrawn by his parent, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belongs: (3)

- (2.) The time or times during which any religious observance is practised or instruction in religious subjects is given at any meeting of the school shall be either at the beginning or at the end, or at the beginning and the end, of such meeting, and shall be inserted in a time-table to be approved by the Education Department, and to be kept permanently and conspicuously affixed in every school-room; and any scholar may be withdrawn by his parent from such observance or instruction without forfeiting any of the other benefits of the school: (4)
- (3.) The school shall be open at all times to the inspection of any of Her Majesty's Inspectors, so, however, that it shall be no part of the duties of such inspector to inquire into any instruction in religious subjects given at such school, or to examine any scholar therein in religious knowledge or in any religious subject or book: (5)
- (4.) The school shall be conducted in accordance with the conditions required to be fulfilled by an elementary school in order to obtain an annual Parliamentary Grant. (6)

(1) For definition of the term "elementary school," see sec. 3.

(2) No parliamentary grant can be made to any school which is not a public elementary school conducted in accordance with the regulations prescribed by this section. See also secs. 96 and 97 and 39 & 40 Vict., c. 79, sec. 20, *post*, and arts. 76-92 in Day School Code, p. 636. As to further conditions to be fulfilled in the case of schools not provided by the Local Education Authority, see sec. 7. of 2 Edw. 7 c. 42, *ante*. In the case of a school provided by a Local Education Authority, not only are the regulations referred to in this section to be observed, but no religious catechism, or religious formulary distinctive of any particular denomination, is to be taught in the school (sec. 14). As to schools to be deemed to be provided by the Local Education Authority, see 2 Edw. 7, c. 42, Second Schedule (13), *ante*.

With regard to the powers of managers of a school to comply with the conditions required to be fulfilled in order to obtain a parliamentary grant, see sec. 99 and 2 Edw. 7, c. 42, Third Schedule (7), *ante*.

(3) The term "parent" includes guardian and every person who is liable to maintain, or has the actual custody of, any child (sec. 3).

It is not specified in what manner the parent is to "withdraw" the child from religious instruction and observances in the school. It would be convenient that the notice of the parent's wish in the matter should be given in writing, but a verbal intimation to the managers or the teacher would probably be deemed sufficient. When no such notice or intimation has been received, and the child refuses or fails to attend the religious instruction or observances in the school, steps should be taken to ascertain from the parent whether or not it is his intention that the child should be withdrawn from such instruction and observances.

The latter part of the sub-section was specially intended to meet the cases of Jewish and Roman Catholic children.

In a case in which it appeared that the vicar had distributed on a Sunday to children attending the National day school—a public elementary school—prizes connected with secular subjects, the Education Department stated that they considered that prizes for secular knowledge given to children in any public elementary school should be open to all scholars, and should be distributed at a time when religious instruction is not given.

(4) When the school is held both in the morning and in the afternoon, the religious observance or instruction in religious subjects may take place not only at the beginning or end, or beginning and end, of the day's secular instruction, but of the morning and afternoon meetings respectively. A parent may withdraw his child from the religious observance or instruction, but the child is not to be withdrawn from the school during the observance or instruction when the school arrangements will admit of secular and religious instruction being carried on in different parts of the school at the same time.

It rests with the local education authority to determine the duration of the morning and afternoon meetings of a public elementary school, subject to secular instruction being given for not less than the time required by the Code. As to religious instruction during school hours in schools not provided by the local education authority, see sec. 7 (1) (a) of 2 Edw. 7, c. 42, *ante*.

At a meeting of the Committee of Council on Education, on the 7th of February, 1871, the following resolutions with reference to this section were adopted:—“(1) That the time-table of each public elementary school shall be submitted to the inspector of the district, at his first visit to the school after the 30th of April, 1871. (2) That the inspector shall enter on every time-table which fulfils the requisite conditions, ‘Approved, on behalf of the Education Department,’ with his signature and the date of his visit. (3) That the inspector may approve any time-table which, while conforming to sec. 7 (No 2) of the Education Act in respect of the time or times appointed for religious observances or instruction, sets apart for instruction in secular subjects at least two consecutive hours at each morning and afternoon meeting, and one hour and a half at each evening meeting of the school. (4) That the inspector shall not express any opinion as to the time or times appointed for religious observances, or instruction, or as to the nature of such instruction, but shall confine himself to seeing that the prescribed amount of time is secured for secular instruction. (5) That before signing the time-table the inspector shall satisfy himself: (a) that a copy of the regulations contained in sec. 7 of the Education Act is conspicuously put up in the school; (b)

that the time-table is printed, or written, in distinct characters, and that sufficient copies of it are provided to be put up in every schoolroom ; (c) that if the school premises admit of it, the children withdrawn by their parents from religious observances or instruction receive, by themselves, instruction in secular subjects during the time or times set apart for religious instruction or observances. (6) That the inspector, at any visit which he pays to a school without notice, shall report to the Education Department if he finds that the work of the school is not being carried on according to the approved time-table, or that the time-table itself is not exhibited in every schoolroom. (7) That if any five parents or guardians of scholars for the time being attending a school make complaint in writing to the Education Department that a time-table, approved by the inspector, is not in accordance with this minute, the Education Department, on receiving such complaint, shall make such inquiry and order in the matter as they may think fit."

This minute of the 7th of February, 1871, was modified by a minute of the 2nd of April, 1878, which records the following resolution of the Committee of Council on Education :—

"1. That the time-table of each public elementary school shall be submitted to the inspector of the district *at every visit he pays to the school.*

"2. That the inspector may approve any time-table which, while conforming to sec. 7 (2) of the Elementary Education Act, 1870, in respect of the time or times appointed for religious observances or instruction, sets apart *at each meeting of a school*, for the instruction in secular subjects *of each class or division of the school, at least the amount of time prescribed by the Code.*

"3 (a.) Provided that at each meeting of a school instruction in secular subjects is continuously given for the prescribed time, by or under the personal supervision of the principal teacher, and that there is a class-room attached to the school, a time-table may be approved which provides for religious instruction (in accordance with the provisions of sec 7, and in board schools of sec. 14 (2), of the Act of 1870) being given in the class-room to separate classes or divisions of the school, either at the beginning or end of the meeting ; and the time of secular instruction need not be the same for the whole school.

"3 (b.) If there is no class-room attached to a school, the time for secular instruction must be the same for the whole school."

So far as a time-table sets forth the time or times to be devoted to instruction in religious subjects no change should be made without the express sanction of the inspector. This sanction ought not to be given in the course of a school year unless strong grounds are shown. The parents of children attending a public elementary school ought to know for certain at what time or times they may withdraw their children, if they wish to do so. Under the Day School Code one of the conditions to be fulfilled by a school in order to obtain a parliamentary grant is that the time-table must be approved for the school by the inspector on behalf of the Board of Education, and must be open at any reasonable time, except the ordinary school hours, to the inspection of the parent of any scholar attending the school who makes a written application to see it.

In a circular letter issued to Her Majesty's inspectors of schools on the 16th of January, 1878, the Education Department stated as

follows :—" It should never be forgotten that a child withdrawn from the whole or part of the religious teaching or observances of a school, should in no way be subjected to disparaging treatment on account of his parent having thought fit to avail himself of his statutory right in this matter. But, on the other hand, in your communications respecting the arrangements of the time-tables, you will remember that you have no right to interfere in any way with the liberty allowed by statute to managers of providing for religious teaching and observances at the beginning and end of the two daily school meetings. In your allusions to this subject and to the conscience clause, you will be most careful not to lead managers or teachers to suppose that the complete provision which has now been made by the Legislature for protecting the rights of conscience, as an essential part of a system of compulsory attendance, and the limitation of the necessary examination by Her Majesty's inspectors to secular subjects, imply that the State is indifferent to the moral character of the schools, or in any way unfriendly to religious teaching."

See sec. 7 of the 39 & 40 Vict., c. 79, *post*, as to the duty of the Local Education Authority to report to the Board of Education any infraction of the provisions of this section in any public elementary school within their district which may come to their knowledge, and also to forward to the Board of Education any complaint which they may receive of the infraction of these provisions.

(5) With regard to examinations in religious subjects of children in a public elementary school not provided by a local education authority, by an inspector other than one of His Majesty's inspectors, see sec. 76.

(6) As to the general conditions to be fulfilled by a school in order to obtain an annual grant, see note (2) to this section.

MANAGEMENT AND MAINTENANCE OF SCHOOLS BY SCHOOL BOARD.

Management of School by School Board.

14. Every school provided by a school board shall be conducted under the control and management of such board in accordance with the following regulations : (1)

- (1.) The school shall be a public elementary school within the meaning of this Act ; (2)
- (2.) No religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school. (3)

(1) This section applies from the "appointed day" to all schools provided by Local Education Authorities, and to those schools only. Any school which has been provided by a school board, or which under sec. 23 is to be deemed to be a school provided by a school board, is to be treated as a school which has been provided by the Local Education Authority, or which is deemed to have been so provided— 2 Edw. 7, c. 42, Second Schedule (13), *ante*.

(2) For definition of the term "public elementary school," see sec. 7.

In order to render a school a public elementary school it is necessary under sec. 7 of the Act that it "shall be conducted in accordance with the conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant." For conditions to be fulfilled by a school in order to obtain an annual grant, see secs. 96 & 97 and 39 & 40 Vict., c. 79, sec. 20, *post*, and Arts. 76-92 in Day School Code, pp. 636-646. See also the conditions prescribed with regard to schools not provided by the Local Education Authority in sec. 7 of 2 Edw. 7, c. 42, *ante*.

In the case of *The Queen on the Prosecution of the Buckingham School Board v. The Town Council of Buckingham*, which came before the Queen's Bench Division on the 15th of November, 1876, a question was raised as to the effect of this provision. It appeared that a rule *nisi* had been granted for a *mandamus* to order the defendants as the rating authority for the borough of Buckingham to pay to the school board of the borough a sum of 150*l.* to meet a deficiency in the school fund. The deficiency, at least in part, was in respect of expenses on account of a school which, in the opinion of the Education Department, was not a public elementary school, and it appeared that the town council, in refusing to pay the amount called for by the precept, acted upon the advice of that Department. The school board, according to the affidavits, proposed to purchase a site for a school, and to borrow for the purpose, but as the consent of the Education Department was necessary to enable them to obtain a loan, and that consent was not given, the proposal was abandoned. The school board then hired a chapel, and fitted it up as a school, and it was in respect of this school that the question arose. For the Education Department it was argued that the school board had no authority to incur an expenditure in connection with a school which was not a public elementary school, and that this school was not a public elementary school, as it was not conducted in accordance with the conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant. One of those conditions was, that a "time-table" approved by the Education Department should be kept permanently and conspicuously affixed in the schoolroom. In the case of this school, no time-table had been approved by the Education Department, and there had been no visit or report on the school by one of Her Majesty's inspectors of schools—such visit and report being necessary for the fulfilment of the conditions prescribed with reference to the parliamentary grant. It was not alleged, however, that the school board had not fulfilled these conditions, so far as they could do so independently of the Education Department. The Court made the rule absolute, but observed that it would not be satisfactory to come to a decision upon the affidavits then before them, and that they would have better materials for deciding the point, which was one of great importance, when the return to the *mandamus* was made. No further proceedings were, however, taken in the case.

The question as to the age up to which there might be admission to a public elementary school provided by a school board was considered in *R. v. Cockerton* ([1901] 1 Q. B. 322).

Sec. 22 (2) of the 2 Edw. 7, c. 42, *ante*, now prescribes from the

"appointed day," subject to the exceptions therein referred to, a limit to the age of children for whom instruction may be provided in a public elementary school.

For Regulations as to Higher Elementary Schools see p. 653.

(3) Under no circumstances is the religious instruction in any school provided by a Local Education Authority to include the teaching of any religious catechism or religious formulary which is distinctive of any particular denomination. Moreover, whatever religious observance or instruction may take place in the school must be subject to all the conditions set forth in the regulations prescribed by sec. 7, and in accordance with the "time-table" contemplated by that section.

The Board of Education, having taken the opinion of the Law Officers of the Crown, decided that the teaching of the Apostles' Creed is not a contravention of this enactment, but that the teaching of that part of the Church Catechism known as the "Duties" is a contravention.

The Education Department stated that they considered that school boards which provided religious instruction in their schools were justified in securing, by inspection and examination of the scholars, information as to the efficiency of the instruction. If the inspection takes place at any ordinary meeting of the school it must be confined to the time for religious instruction prescribed by the time-table. If the time allowed by the time-table is not sufficient the board may fix some other time, not being a meeting of the school, for the purpose. Sufficient notice should be given to the parents to enable them to avail themselves of their right to withdraw their children. The notice of the religious examination should expressly point out that the children may be withdrawn. It seems desirable that such religious examination should take place, say on Saturdays, or on some day when an ordinary meeting of the school would not otherwise be held. In all cases the proceedings must, of course, be subject to the provisions of the Elementary Education Act of 1870, secs. 7 (2) and 14 (2).

Schools which have been transferred to a school board under the provisions of sec. 23 are, during such times as the Local Education Authority have any control over the schools, to be deemed to be schools "provided" by them within the meaning of sec. 14. See also the 36 & 37 Vict., c. 86, sec. 13, *post*, with reference to schools connected with endowments, charities, or trusts accepted by Local Education Authorities, whether as the successors of school boards or otherwise.

Regulations to the following effect were adopted in whole or in part by a large number of school boards with reference to *religious instruction, prayers, and hymns*, in schools provided by them:—
1. That in the schools provided by the board the Bible shall be read, and there shall be given such explanations and such instruction therefrom in the principles of morality and religion as are suited to the capacities of children; provided always (a) that in such explanations and instruction the provisions of the Act in secs. 7 and 14 be strictly observed, both in letter and spirit, and that no attempt be made in any such schools to attach children to any particular denomination; (b) that in regard of any particular school the board shall consider and determine upon any application by managers,

parents, or ratepayers of the district, who may show special cause for exception of the school from the operation of this resolution, in whole or in part. 2. That such explanations and instruction as are recognized by the foregoing regulation shall be given by the responsible teachers of the school. In this Article the term "responsible teachers" does not include pupil teachers. 3. That in accordance with the general practice of existing elementary schools provision may be made for offering prayer and using hymns in schools provided by the board at the "time or times" when, according to sec. 7, sub-section 2, of the Elementary Education Act, "religious observances" may be "practised." 4. That the arrangements for such "religious observances" be left to the discretion of the teacher and managers of each school, with the right of appeal to the board by teacher, managers, parents, or ratepayers of the district: Provided always that, in the offering of any prayers and in the use of any hymns, the provisions of the Act in secs. 7 and 14 be strictly observed, both in letter and in spirit, and that no attempt be made to attach children to any particular denomination. 5. That during the time of religious teaching or religious observance, any children withdrawn from such teaching, or observance, shall receive separate instruction in secular subjects. 6. That a copy of secs. 7 and 14 of the Elementary Education Act, 1870, and also of the preceding regulations, must be hung up in a conspicuous part of the schoolroom.

As regards *the corporal punishment of children*, the Education Department, in the instructions to H.M. inspectors, stated as follows:—"My Lords regret to receive frequent complaints of the excessive use of corporal punishment in schools, and of its occasional infliction by assistants and pupil teachers, and even by managers. The subject is one on which your own observation is necessarily incomplete, since children are not likely to be punished in your presence on the day of inspection. But you will not fail in your intercourse with teachers and managers to impress upon them that the more thoroughly a teacher is qualified for his position, by skill, character, and personal influence, the less necessary it is for him to resort to corporal chastisement at all. When, however, the necessity arises, the punishment should be administered by the head-teacher."

In Revised Instructions, 1901, the Board of Education state that a separate book (Punishment Book) must be kept in which every case of corporal punishment inflicted in the school should be entered.

These instructions also contain the following observations on punishments generally: "If discipline were perfectly efficient, punishment would be unknown, for the result of efficient discipline is to engender the good habits which render punishment unnecessary. Order, diligence, and obedience, which are only maintained by frequent punishment or the dread of it, do not constitute good discipline. Indeed, the infliction of punishment is, to some extent, a confession of defeat by the authority that inflicts it; for the object of discipline is to prevent the commission of faults. No punishment which excites the emotion of terror in a child should ever be employed. In an infants' school no punishment should be permitted which causes bodily pain. In schools for older children, corporal punishment should be discouraged as an ordinary expedient in boys' schools, and altogether in girls' schools. The punishment register, which is required in all schools, may serve some good purpose if it induces teachers to reflect occasionally on their methods, and to consider

whether these really tend to the formation of the habit of good conduct."

As to the liability of teachers for caning boys on the hand, the case of *Gardner v. Bygrave*, L. G. C. (1890) 51; 53 J. P. 743, may be referred to. In that case it appeared that a summons was taken out against the appellant, who was the head-master of a board school, for having unlawfully assaulted and beaten the respondent who was a pupil attending the school. At the hearing it appeared that the respondent committed a fault which properly called for corporal punishment by the appellant, who inflicted the same by giving the respondent four strokes with a cane on the hand. The magistrate was of opinion that if caning on the hand was a proper method of punishment to adopt in the circumstances of the case, the punishment was inflicted unobjectionably; but he was also of opinion that punishment by caning on the hand, however inflicted, was necessarily attended by risk of serious injury to the hand; that there were methods of corporal punishment quite as available and efficacious, and not necessarily attended by any risk, of which methods, if the appellant had used due caution, one or another would have been substituted by him for that which he adopted, and that for these reasons caning on the hand was in the circumstances of the case improper, and ought not to have been inflicted. He accordingly convicted the appellant of the assault. On a case stated, the High Court quashed the conviction. Mr. Justice Charles observed that the judgment of the magistrate was grounded on his opinion that caning on the hand, however inflicted, was necessarily attended by risk of serious injury to the hand. But he found as a fact that in this case it was unobjectionably inflicted, and did not find that any serious injury was caused by it. He was wrong in thinking that under these circumstances the possible risk made it criminal for the master to cane on the hand.

With respect to the right of a teacher to punish a boy for conduct on his way to school, see *Cleary v. Booth*, [1893] 1 Q. B. 465; 62 L. J. M. C. 87; 68 L. T. 349; 41 W. R. 391. In that case the head-master of a board school was charged with assaulting a boy attending the school. It appeared that a boy when coming to the school was struck by a boy belonging to the same school, and with whom was another boy also belonging to the school, and that complaint was made to the master on their arrival at the school, who then and there punished the boy who committed the assault, and also the boy who was in his company. The justices convicted the master, on the ground that he was not entitled to punish a boy for anything done by him although against another boy on his way to the same school, the act being committed off the school premises and unconnected with the school. It was held on a case stated for the opinion of the High Court that the authority of the master extended not only to acts done by his boys when in school, but also to acts done by them on the way to and from school, and that this was more especially so in the present case, where the offence complained of related to a boy in the same school. Among the powers delegated by the parents to the school-master was such a power as was exercised by the master in this case.

As regards home lessons, it was stated in instructions issued to H.M. inspectors by the Education Department, that the subject is mainly one of internal discipline, and not necessarily within the purview of the inspectors. "For delicate or very young children

such lessons are plainly unsuitable, and the special circumstances of some schools render it inexpedient to require home tasks in any form. Of such circumstances the local managers are the best judges. But in the upper classes of good schools, in which the teachers exert a right influence and take an interest in their work, the practice of giving short exercises to be performed at home is attended with no difficulty, and is open to no practical objection. The best teachers use such exercises rather to illustrate, and to fix in the memory, lessons which have already been explained in school, than to break new ground or to call for new mental effort. This purpose is served by lessons of a very simple and definite character—a sum, a short poetical extract, a list of names or dates, a letter, an outline map, or a parsing exercise—such as may readily be prepared in half an hour, and may admit of very easy testing and correction on the following day. When these conditions are fulfilled the home task is found to have a very valuable effect, not only in helping the progress of the scholar, and in encouraging the habit of application, but also in awakening, on the part of the parents an interest in school work."

At the same time, it is to be borne in mind that a child cannot be punished by detention at school for not doing home lessons. In *Hunter v. Johnson* (L. R. 13 Q. B. D. 225; 53 L. J. M. C. 182; 32 W. R. 857), it was held that the Education Acts do not authorize the enforcement of the preparation of lessons at home by children attending a board school: and where a child was detained at school by the teacher after school hours for not having done home lessons, the master was held liable to be convicted for an assault.

As regards personal liability for injury caused by an accident to a scholar in a public elementary school, the case of *Crisp v. Thomas* (62 L. T. 810) may be referred to. In that case the plaintiff sued by her father as her next friend to recover damages for personal injuries caused by the defendant or his servants negligently allowing a board or easel to fall upon her in the school of which he was an *ex officio* trustee and member of the committee of management. It was alleged that the plaintiff, who was a scholar in the school, had sustained injury by reason of the negligence of the teachers, a black-board having fallen and struck her on the head. The jury found a verdict for the plaintiff, and assessed the damages at £20. Mr. Justice Charles, however, came to the conclusion that there was no evidence to warrant the verdict at which the jury arrived. He observed that the defendant was an *ex officio* trustee of the school; but it would be intolerable to impose upon him as such trustee a liability for the negligence of the mistress of the school. But he thought that if he had decided against the defendant upon the question of negligence, he should have held him liable as a member of the committee. On an appeal from this decision, it was held (63 L. T. 756) that there was no sufficient evidence of negligence, and that if there had been negligence on the part of the teachers, the defendant, although a member of the committee of the school, was not liable for their negligence.

Fees of Children.

17. Every child attending a school provided by any school board shall pay such weekly fee as may be prescribed

by the school board, with the consent of the Education Department, but the school board may from time to time, for a renewable period not exceeding six months, remit the whole or any part of such fee in the case of any child when they are of opinion that the parent of such child is unable from poverty to pay the same, but such remission shall not be deemed to be parochial relief given to such parent.

The provisions of this section are materially affected by the 54 & 55 Vict., c. 56, *post*, as regards schools provided by Local Education Authorities or schools which are to be deemed to be so provided (2 Edw. 7, c. 42, Second Schedule (13), *ante*), where fee grants are paid. Sec. 1 of that Act prescribes the conditions of the fee grant; sec. 2 limits the fees payable in schools receiving the fee grant, and sec. 3 prohibits charges for books, &c., in certain schools where the fee grant is allowed. By sec. 4 power is conferred on the Board of Education under certain specified circumstances to approve of the charge of fees or an increase of the fees in particular schools.

This section is to be construed as not preventing a Local Education Authority from admitting scholars to any school provided by them without requiring any fee when they think fit to do so. See 54 & 55 Vict., c. 56, sec. 8, *post*.

It would appear that it will rest with the Local Education Authority to determine whether they will allow fees to continue to be charged in public elementary schools not provided by them (see 2 Edw. 7, c. 42, sec. 14, *ante*).

The following comments are subject to the provisions above referred to in the 54 & 55 Vict., c. 56, and only apply to children in respect of whose attendance school fees are still payable:—

In a public elementary school the ordinary payments in respect of the instruction from each scholar are not to exceed ninepence a week. With regard to this provision, the Board of Education by the Day School Code provide as follows.—The “ordinary payment” for each scholar must cover all the instruction given in the school; and will, as a rule, be found by dividing the total amount of fees payable for any week, by the number of scholars on the registers for that week. But if more than one-third of the scholars pay fees exceeding ninepence a week the “ordinary payment” will be considered to exceed ninepence a week. The term “payments in respect of the instruction” means the fee payable by the parent, and does not include any payment for the purchase of books or other such articles. But a weekly or other periodical payment for the use of books or other school requisites, if required as a condition of admission to the school, is treated as a fee.

The weekly fees to be paid by the children attending a school to which the section refers must be approved by the Board of Education.

The Education Department stated that whilst they did not object to a distinction being made between the fees charged to children under and over seven years respectively, they would urge the desirability of not raising the fee paid by a child as he rises in the school,

as such a regulation was a discouragement to proficiency. The Department also expressed a strong opinion that the school fees of half-time scholars should not exceed those charged to other children. In some districts reduced fees were charged in cases where two or more members of the same family were attending a school.

Where proposals were made that a double fee should be charged in cases where the attendance of a child was irregular, the Department, whilst not objecting, stated that they could not support the rule when the additional fee was beyond the means of the parent. They also concurred in proposals that a higher fee than the ordinary fee should be charged when a child was capriciously withheld from the annual inspection.

As to the prepayment of school fees, the Education Department stated, in the case of a school board:—"My Lords approve of the rule requiring the payment of school fees in advance. It is the usual practice, gives parents an interest in securing the regular attendance of their children, and is the most certain and economical mode of collecting this part of the school income. It rests with each board to determine whether they will require prepayment as a condition of a child's admission to a school. If they do so, my Lords will assist the board in maintaining the rule by not regarding the refusal of admission to a child who does not bring the school fee in advance as a violation of the Code; but it must be distinctly understood that the board will take such measures as shall prevent the rule from having the effect of depriving children of education. For this purpose the teacher should report every case in which that rule is enforced to the board, who should, without delay, either (1) satisfy themselves of the parents' inability through poverty to pay the fee, and remit it under sec. 17 of the Elementary Education Act of 1870; or (2) take proceedings under their bye-laws to enforce the child's attendance, on the condition—payment of the school fee—provided by the 17th section. . . . In any event the Department consider themselves bound to take such steps as they may find necessary to secure that in every board school the statutory obligations of the Act of 1870 are duly discharged by both school boards and parents before any annual grant is made on behalf of such school."

In the case of *Saunders v. Richardson*, see p. 326, *post*, it was held that a parent was liable to conviction for non-compliance with a school attendance order, when he had caused his child to attend the school named in the order, but without sending the school fee, when a school fee was payable, and the child had been refused admission on the ground of the non-payment of the fee. Further it was held in *The London School Board v. Wood*, p. 273, *post*, that when a parent sent his child, aged ten, to one of the board schools but did not pay, though he was able to pay, the weekly fees prescribed by the school board and approved by the Education Department, and the child was admitted to the school and received instruction therein, the parent had not caused the child to attend school within the meaning of the bye-laws and was liable to a penalty.

The question as to whether when school fees are allowed to get into arrear the fees can be recovered in the County Court, was decided in the case of *The School Board for London v. Wright*, L. R. 12 Q. B. D. 578; 53 L. J. Q. B. 266; 50 L. T. 606; 32 W. R. 577. It appeared that the defendant, who was the father of a child of school age, had been summoned to appear at the County Court for non-

payment of arrears of school fees amounting to 1s. 6d. It was proved that the child had attended the Buckingham Gate School, that the fees were in arrear, and that the scale of fees had been duly fixed by the school board and approved by the Education Department. The County Court Judge held that the school fees were not a debt recoverable by action, and non-suited the plaintiffs, with leave to appeal. On appeal to the High Court, Mr. Justice Manisty and Mr. Justice Denman held (Lord Coleridge dissenting), that the parent in sending the child to school in the discharge of a duty imposed on him by statute did not enter into a contract, express or implied, to pay the fees for the child's instruction, and that consequently the arrears of fees were not recoverable by action in the County Court. On an appeal, the Court of Appeal affirmed the decision.

The teacher of a board school is not personally responsible for fees which the parents of children may fail to pay, and in a case in which a District Auditor surcharged the schoolmaster of a board school with the amount of the school fees in arrear from the parents on the ground that he had not collected the fees and brought them into account to the credit of the school, the Local Government Board on an appeal reversed the surcharge.

The provision that the remission of the school fees shall not be deemed to be parochial relief to the parent, is to ensure that the parent shall not by such remission be disqualified from voting in elections. It is also provided by the Municipal Corporations Act, 1882 (45 & 46 Vict., c. 50), sec. 33, that a person shall not be disqualified to be enrolled as a burgess by reason only that his child has been admitted to and taught in any public or endowed school.

As to the offence of fraudulently obtaining the remission of school fees, see sec. 37 of the 39 & 40 Vict., c. 79, *post*.

With respect to the payment by guardians of the school fees of children of poor parents who are not paupers, see sec. 10 of 39 & 40 Vict., c. 79, *post*, and as to the granting of relief by guardians to enable out-door pauper children to attend school, sec. 40 of that Act, and sec. 5 of the 43 & 44 Vict., c. 23, *post*.

As to the payment of fees for children employed in factories or workshops, see sec. 70 of the Factory and Workshop Act, 1901, p. 502, and in the case of children employed in coal mines, see Coal Mines Regulation Act, 1887, sec. 10, p. 510. See also the provisions of the Canal Boats Acts, pp. 512-514.

Maintenance by School Board of Schools and Sufficient School Accommodation.

18. The school board shall maintain and keep efficient every school provided by such board, and shall from time to time provide such additional school accommodation as is [in the opinion of the Board of Education] necessary in order to supply a sufficient amount of public school accommodation for their district. (1)

A school board may discontinue any school provided by them, or change the site of any such school, if they

satisfy the Education Department that the school to be discontinued is unnecessary, or that such change of site is expedient. (2) . . .

(1) In this section the words "in the opinion of the Board of Education" are substituted for "in their opinion" (2 Edw. 7, c. 42, Third Schedule (6), *ante*), and it will therefore devolve on the Board of Education and not on the Local Education Authority to determine whether additional school accommodation is necessary.

This section refers to schools provided by the Local Education Authority. Any school which has been provided by a school board, or which under sec. 23 or 36 & 37 Vict., c. 86, sec. 13, *post*, is to be deemed to be a school provided by a school board, is to be treated as a school which has been provided by the Local Education Authority: 2 Edw. 7, c. 42, Second Schedule (13), *ante*.

As to the term "public school accommodation," see sec. 5 of this Act. The Third Schedule (5) of the 2 Edw. 7, c. 42, in substitution for sec. 5 of the 54 & 55 Vict., c. 56, enacts that the duty of a Local Education Authority under the Elementary Education Acts to provide a sufficient amount of public school accommodation shall include the duty to provide a sufficient amount of public school accommodation without payment of fees in every part of their area.

With regard to the powers of a Local Education Authority to provide sufficient public school accommodation by building or otherwise, see sec. 19. As to the provision of new schools, or enlargement of schools, see secs. 8 and 9 of 2 Edw. 7, c. 42, *ante*.

See also sec. 7 of the last-mentioned Act as to the duty of the Local Education Authority to maintain and keep efficient all public elementary schools within their area which are necessary, when the schools are provided by them; and in case of schools not provided by them, when the conditions referred to in that section are fulfilled.

Sec. 16 of that Act provides for the enforcement of the duties of the Local Education Authority under the Elementary Education Acts in respect of the provision of additional public school accommodation.

As to the provision of accommodation for blind and deaf children, see 56 & 57 Vict., c. 42, *post*, and for defective and epileptic children, 62 & 63 Vict., c. 32, *post*.

(2) With reference to the sale, leasing, or exchange of any land or school site belonging to a Local Education Authority, see secs. 22, 78; and as to the re-transfer of a school which has been transferred by the managers to a school board, see sec. 24.

Powers of School Board for providing Schools.

19. Every school board for the purpose of providing sufficient public school accommodation for their district, . . . may provide, by building or otherwise, schoolhouses properly fitted up, and improve, enlarge, and fit up any schoolhouse provided by them, and supply school apparatus and everything necessary for the efficiency of the schools provided by them, and purchase and take on lease

any land, and any right over land, or may exercise any of such powers.

As to the provision by a Local Education Authority of sufficient public school accommodation, see secs. 7 and 18 and notes on those sections.

With regard to the duty which devolves on the Local Education Authority of maintaining and keeping efficient public elementary schools within their area which are necessary, see 2 Edw. 7, c. 42, secs. 7 and 16, *ante*.

For definition of "schoolhouse," see sec. 3.

With respect to the use by the Local Education Authority of school furniture and apparatus belonging to the trustees or managers of a public elementary school not provided by the Local Education Authority, see 2 Edw. 7, c. 42, Second Schedule (14).

As regards the power of a Local Education Authority to borrow for the provision of school accommodation, see sec. 19 of 2 Edw. 7, c. 42, *ante*.

As to the powers of a Local Education Authority with regard to the purchase of land, &c., see sec. 20.

The 41 & 42 Vict., c. 42 (an Act to amend and further extend the Acts for the Commutation of Tithes in England and Wales), provides that in all cases where land charged with rent-charge in lieu of tithes is taken for the erection of any school under the Elementary Education Act, or the enlarging and improving of the premises or buildings occupied or used as a school under that Act, the persons proposing to carry out the works, buildings or improvements shall as soon as they are in possession of the land, and before the land is applied to the purpose, apply to the Tithe Commissioners to order the redemption of the rent-charge for a sum of money equal to twenty-five times the amount thereof; and that the redemption money with the expenses incident to the redemption shall be paid to the commissioners within a time to be fixed by such order or within any enlarged time the commissioners may appoint, such money to be applied by the commissioners in the manner provided by the Tithe Commutation Acts. For the purposes of this enactment the Board of Agriculture are now substituted for the Tithe Commissioners.

As to the rules which the Board of Education have laid down with regard to the planning and fitting up of public elementary schools, see note to sec. 5.

The Local Government Board have in several instances sanctioned the produce of the sale of parish property being applied towards defraying the cost of the establishment by school boards of public elementary schools, where the parish has been free from debt in respect of workhouse buildings.

With respect to the provision of school accommodation for blind and deaf children, see 56 & 57 Vict., c. 42, *post*, and for defective and epileptic children, see 62 & 63 Vict., c. 32, *post*.

The Law Officers of the Crown (Sir R. Baggallay and Sir J. Holker) advised that a school board could with the view of maintaining the efficiency of a public elementary school, devote a portion of their funds to the purchase of books for prizes. With regard to prizes for school attendance, the Education Department stated that whilst they offered no objection to prizes given to a few of the most regular scholars, and had reason to believe that the Local Government Board,

through its auditors, held that a school board could legally award a reasonable number of prizes to such scholars as have attended best, such an award to all children who have attended a certain minimum number of times would not be legal.

In a case in which an auditor disallowed in the accounts of a school board the cost of medals with clasps, given by the school board to children in the school who had been selected as deserving of reward for good attendance and diligence in their school work, the Local Government Board on appeal reversed the auditor's decision.

As to the use by the Local Education Authority of any room in a schoolhouse, in the case of a school not provided by the Local Education Authority, out of school hours for any educational purpose, when they have no suitable accommodation in schools provided by them, see 2 Edw. 7, c. 42, sec. 7 (1) (e) and (2), *ante*.

With regard to the *use of schoolrooms for parliamentary elections*, the Ballot Act, 1872 (35 & 36 Vict., c. 33), provides that the returning officer at a parliamentary election may use, free of charge, for the purpose of taking the poll, any room in a school receiving a grant out of moneys provided by Parliament; but he is to make good any expense incurred by the person or body of persons having control over the same on account of its being used for taking the poll as aforesaid. There is no similar provision with regard to *municipal elections*, but the Local Government Act, 1888 (51 & 52 Vict., c. 41), by sec. 75, makes the provision above referred to in the Ballot Act applicable to *elections of County Councillors* under the Local Government Act, 1888, and further provides that the returning officer may use the rooms free of charge for hearing objections to nomination papers and for counting votes in the case of such elections. The Local Government Act, 1894, by sec. 48 (3) provides to the same effect with respect to *elections of Guardians, Urban and Rural District Councillors, and Parish Councillors*, and other elections under that Act.

With respect to the use of a public elementary school in receipt of an annual parliamentary grant as a committee room for the purpose of promoting the election of a candidate at a parliamentary election, sec. 20 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict., c. 51), provides that "The premises of any public elementary school in receipt of an annual parliamentary grant, or any part of any such premises shall not be used as a committee room for the purpose of promoting or procuring the election of a candidate at an election, and if any person hires or uses any such premises or any part thereof for a committee room, he shall be guilty of illegal hiring, and the person letting such premises or part, if he knew it was intended to use the same as a committee room, shall also be guilty of illegal hiring." As regards the definition of "committee room," it is provided by sec. 64 that no room or building is to be deemed to be a committee room for the purposes of the Act by reason only of the candidate or any agent of the candidate addressing therein electors, committee men, or others. A person guilty of the offence of illegal hiring is, on summary conviction, liable to a fine not exceeding 100*l*. A candidate, or an election agent of a candidate, who is personally guilty of an offence of illegal hiring, is to be deemed guilty of an illegal practice, and a person guilty of an illegal practice is, on conviction, liable to a fine not exceeding 100*l*., and is incapable, during a period of five years from the date of his conviction, of being registered as an elector,

or voting at any election, whether it be a parliamentary election or an election for a public office held for or within the county or borough in which the illegal practice has been committed.

In *Cheshire v. School Board for West Bromwich*, which came before the Master of the Rolls on the 5th December, 1878, the plaintiff applied for an injunction to restrain the school board from allowing a public meeting of Liberals to be held in the board school, and from otherwise using the school for meetings of a political or party character. The plaintiff in an affidavit stated that, owing to the excited state of party feeling in West Bromwich, there was every probability that there would be considerable disturbance and riot at the meeting, and that the schoolhouse would, probably, be greatly damaged. The Master of the Rolls said that two questions were raised—first, as to the title of the plaintiff to sue; and, secondly, whether under the various Acts a school board had the right to utilize their schoolhouse when not wanted for school purposes. These questions were far too serious to decide on an interlocutory application. The evidence as to injury was far too problematical for him to act upon. It was only an apprehended damage which might never, and he hoped would not, occur. But even if there were any damage done to the structure, the members of the school board would be liable personally if they had been parties to an illegal user of the school, and, in the next place, the persons hiring the school would be responsible; and it would only be in case of the inability of all these persons to pay for the damage that the burden would fall on the rates.

The Allotments Act, 1890 (53 & 54 Vict., c. 65), by sec. 5, provides as follows with regard to the use of rooms in schools receiving Parliamentary grants *in connection with the question of allotments*:—"Any room in a school receiving a grant out of moneys provided by Parliament may, except during ordinary school hours, be used free of charge for the purpose of an inquiry under this Act, or for the purposes of this Act by the county council or any committee appointed under this Act, or, with the consent of any two managers, for the purpose of holding public meetings to discuss any question relating to allotments under this Act or the principal Act, but any damage done to the room and any expense incurred by the person or persons having control over the room on account of its being so used shall be paid by the county council or by the persons calling the meeting. Nothing in this section shall give any right to hold a public meeting in a schoolroom (a) unless not less than six days before the meeting a notice of the intention to hold the meeting on the day and at the time specified in the notice, signed by the persons calling the meeting, being not less than six in number, and being persons qualified to make a representation to the local authority under the principal Act, has been given, if the school is under a school board, to the clerk of the board, and in any other case to one of the managers of the school; nor (b) if the use of the schoolroom on the said day and at the said time has previously to the receipt of the notice of the meeting been granted for some other purpose; but in that case the clerk or manager, or some one on his behalf, shall forthwith, after the receipt of the notice, inform in writing one of the persons signing it that the use of the school has been so granted for some other purpose, and name some other day on which the schoolroom can be used for the meeting. If the persons calling the meeting fail to obtain the use of a schoolroom under this section,

they may appeal to the standing committee under this Act [*i.e.* the standing committee appointed by the county council with reference to allotments], and the committee shall forthwith decide the appeal and make such order respecting the use of the room as seems just."

In connection with the reference to a school board in the above enactment, see 2 Edw. 7, c. 42, Third Schedule (10), *ante*.

As regards the use of schoolrooms in public elementary schools in a rural parish, *i.e.* in a parish in the district of a rural district council, by parochial electors and parish councils, the Local Government Act, 1894 (56 & 57 Vict., c. 73), by sec. 4, provides as follows:—

"4.—(1.) In any rural parish in which there is no suitable public room vested in the parish council or in the chairman of a parish meeting and the overseers which can be used free of charge for the purposes in this section mentioned, the parochial electors and the parish council shall be entitled to use, free of charge, at all reasonable times, and after reasonable notice, for the purpose of—

- (a) the parish meeting or any meeting of the parish council ; or
- (b) any inquiry for parochial purposes by the Local Government Board or any other Government department or local authority ;
or
- (c) holding meetings convened by the chairman of the parish meeting or by the parish council, or if as to allotments in the manner prescribed by the Allotments Act, 1890, or otherwise as the Local Government Board may by rule prescribe, to discuss any question relating to allotments, under the Allotments Acts, 1887 and 1890, or under this Act ; or
- (d) the candidature of any person for the district council or the parish council ; or
- (e) any committee or officer appointed, either by the parish meeting or council or by a county or district council to administer public funds within or for the purposes of the parish

any suitable room in the schoolhouse of any public elementary school receiving a grant out of moneys provided by Parliament, and any suitable room the expense of maintaining which is payable out of any local rate :

"Provided that this enactment shall not authorize the use of any room used as part of a private dwelling-house, nor authorize any interference with the school hours of an elementary day or evening school, nor, in the case of a room used for the administration of justice or police, with the hours during which it is used for these purposes.

"(2.) If, by reason of the use of the room for any of the said purposes, any expense is incurred by the persons having control over the room, or any damage is done to the room or to the building of which the room is part or its appurtenances, or the furniture of the room or the apparatus for instruction, the expense or damage shall be defrayed as part of the expenses of the parish meeting or parish council or inquiry as the case may be ; but when the meeting is called for the purpose of the candidature of any person, such expense or damage shall be reimbursed to the parish meeting or the parish council by the persons by whom or on whose behalf the meeting is convened.

"(3.) If any question arises under this section as to what is reasonable or suitable, it may be determined, in the case of a schoolhouse, by the Board of Education, in the case of a room used for the

administration of justice or police, by a Secretary of State, and in any other case by the Local Government Board."

It will be seen that in the case of a schoolhouse the duty is imposed upon the Board of Education of settling any question arising under the section as to what is "reasonable" or "suitable," that is to say,—whether (1) the *time* for which the use of a room is required, and (2) the *notice* given of intention to use it, is *reasonable*; and whether the particular room, the use of which is required, is *suitable* for the purpose in view.

With respect to what is *reasonable time*, the Education Department in a circular letter dated the 30th November, 1894, stated:—"It is expressly declared by the proviso appended to sub-section (1) that nothing shall authorize any interference with the school hours of an elementary day or evening school. The first use of a schoolroom is for education, and in requiring the use of a room for any of the purposes enumerated in the section, especial care should be taken to select a time which will cause no inconvenience, or the very least possible, to the persons responsible for the due conduct of the day or evening school. The same care should be taken in cases where classes are conducted at fixed times in the schoolroom in connection with the technical education committees of county councils. In deciding what is 'reasonable time,' the Department, if appealed to for a decision, will be largely influenced by the consideration whether in any particular case efforts have been made to avoid unnecessary difficulty and friction. On the one hand the parish council and parochial electors should do all that is possible to avoid asking to have the use of a room at a time when it is known to be really required for other purposes. On the other hand the persons having control over the room will be acting for the convenience of the parish, if they will take care to make known at what times they require the room for their own use and at what times it will be ordinarily available for use by the parish council or parochial electors if so required under sec. 4."

With respect to what is *reasonable notice*, the Education Department stated:—"They regarded the question as relating principally to the length of time intervening between the receipt of the notice by the persons having the right to dispose of the school, and the date for which the use of the school is required. The Department considered that, except as regards some meetings of parish councils, the notice should be served in no case less than seven clear days before the date named, and that in most cases longer notice, as a rule not less than fourteen days' notice, should be given. It will be observed that not less than seven clear days' notice is required by Schedule I., Part I., Rule 2, of the Local Government Act, 1894, before any parish meeting can be held. As regards some meetings of parish councils, a shorter notice may suffice. By Schedule I., Part II., Rule 5, of the Act, notice of a meeting of a parish council must be given at least three clear days beforehand. It is probable that, on most occasions, the parish council will only require for its meetings a class-room, if there is one attached to the school, and in any case the preparation of a room for the limited number of persons who will be members of the parish council will not cause much inconvenience. The Department therefore, thought that three clear days' notice will be ordinarily sufficient for a special parish council meeting, but longer notice should, as a general rule, be given. As regards the four regular statutory meetings of the parish council, including the 'annual meeting,' an endeavour should be made to fix the dates at the beginning of each

year, and to give formal notice of them to the school managers, so soon as the dates are fixed. In the case of each of these regular meetings fourteen clear days' notice should be given. Notices will be considered to run, in the case of board schools, from the service of a properly addressed notice at the regular place of business, or residence, of the chairman or clerk of the school board, and in the case of schools not provided by school boards, from the service of a notice addressed to the school managers, at the schools in which the room is required. Arrangements should, of course, be made by the persons having the disposal of the schools for the immediate transmission to the proper quarter of any such notice. Unless notice is served as above indicated, the Department will not hold it to be reasonable notice under the section."

As regards the question what is a *suitable room*, the Education Department stated:—"They do not apprehend that any serious difficulty is likely to arise as to the suitability of the room, since it is specially declared at the end of sub-section (1) that the use of any room used as part of a private dwelling-house is not authorized by the section. Any questions as to suitability will, therefore, be confined to demands to use one room or another in the school proper, exclusive of the teacher's residence."

With reference to the use of a room under sec. 4 (1) (d) for the candidature of any person for the district council or the parish council, the Act provides that the room can be used by (a) the parish council; and (b) the parochial electors. The Education Department were advised by the Law Officers of the Crown with regard to such use by the parochial electors that the notice to be given to the persons having control over the room should proceed from the parochial electors and not from the candidate, and that the right to use the room is not a right of the candidate, but a right of the electors or the council. The Law Officers further advised that the expression "parochial electors" means, not any section or majority of such electors, but the body as a whole, that is to say, acting as a parish meeting, and that the only way for the parochial electors to demand the use of the room is by notice given pursuant to a resolution at a parish meeting.

Schools provided by school boards were held to be liable to assessment to the poor rate and other local rates. In *R. v. West Bromwich School Board* (L. R. 13 Q. B. D. 929; 53 L. J. M. C. 153; 52 L. T. 164; 32 W. R. 866), the question was raised as to the assessment of a board school, and in the Court of Appeal it was held (affirming the judgment of Coleridge, C.J., Stephen and Mathew, JJ.), that the decision of the House of Lords in *Jones v. Mersey Docks and Harbour Board*, and *Mersey Docks and Harbour Board v. Cameron* (35 L. J., N. S., M. C. 1; 12 L. T., N. S., 643; 11 Jur., N. S., 746), to the effect that all premises of any value and capable of occupation are rateable, applied, there being nothing in the statute to confer any exemption from assessment in the case of board schools.

There is no exemption from rating in the case of schools provided by a Local Education Authority.

The principle on which a school which had been provided by a school board should be rated was discussed in *The Overseers of the Poor of Chorlton-upon-Medlock v. The Guardians of the Chorlton Union and the Overseers of Ardwick* (51 L. J., N. S., 458; 47 L. T., N. S., 96). In that case it appeared that the school board for Manchester purchased 3630 square yards of land for 2234*l.*, and erected

thereon school buildings at a cost of 8945*l*. The money required was obtained upon loan from the Public Works Loan Commissioners, at the rate of 3½ per cent. per annum interest. The buildings accommodated 1300 scholars at the standard of eight square feet per child. The maximum fee per scholar chargeable by the school board was ninepence per week. The fees actually charged were—senior department, 4*d*. per week; junior department, 3*d*. per week; infants' department, 2*d*. per week. The average annual cost of repairs, insurance, &c., was 46*l*. Any loss arising in the occupation and carrying on of the schools was made up by a charge upon the borough rate, and equally distributed according to rateable value over all the townships within the city. The school board accounts for the year 1881, in respect of these schools, showed—income, 1469*l*.; expenditure, 1476*l*.; loss made up by rate, 7*l*. Profit in a commercial sense was impossible. The Recorder of Manchester having held on an appeal that the restricted profits of the occupier must determine the amount of the rateable value, the assessment committee, in a new valuation list, entered the school premises at a nominal value. Four modes of estimating the rateable value were suggested for the consideration of the Court:—(1.) The annual interest actually paid on the money borrowed and expended in the purchase or erection. (2.) The annual rent which a contractor would require if he erected the premises as they stood for the purposes for which they were used. (3.) The amount of rent which a tenant unfettered as to uses, and unrestricted as to charges, would give if the premises were in the market; and (4.) The annual profit which the school board make or can make. The Court held that the third alternative indicated the principle upon which the property was to be assessed, and that the rateable value was to be based on the amount of rent which it was estimated that a tenant unfettered as to uses and unfettered as to charges would give, if the premises were in the market.

In the subsequent case of *The London School Board*, appellants, *v. The Assessment Committee of St. Leonard's, Shoreditch*, respondents (L. R. 17 Q. B. D. 738; 55 L. J. M. C. 33, 169; 55 L. T. 384; 34 W. R. 583), the question as to the principle on which a school provided by a school board should be assessed was again raised. The school was assessed at 1150*l*. rateable value. The assessment was arrived at by calculating the annual value of the land at 4*l*. per cent. on its original cost, and the annual value of the buildings at 5*l*. per cent. on their estimated cost. It was proved before the Court of Assessment Sessions, that the price paid for the land and buildings was fair and reasonable, and that there had been no extravagance or unnecessary outlay, but profit in a commercial sense could not be made by the school board as tenants of the schools, and that if the schools were then in the market to be let to a tenant as schools subject to the restrictions imposed by the Education Department acting under their statutory powers a tenant could not be found who would be willing to take them. The Court of General Assessment Sessions, being of opinion that the school board ought not to be excluded from the number of hypothetical tenants who might be willing to rent the premises, decided in favour of the respondents, but reduced the rateable value to 1100*l*. The Divisional Court (Cave and Wills, JJ.) decided in favour of the respondents, affirming the Order of Sessions. The Court of Appeal affirmed the decision of the Divisional Court, holding that in assessing the school premises

the school board ought to be considered as a possible tenant, and that the gross and rateable values should be calculated on the rent which any tenant, including the school board, might reasonably be expected to pay for the premises for use as a school.

In *The School Board for London v. The Assessment Committee of the Wandsworth and Clapham Union*, 16 T. L. R. 137, which came before the Queen's Bench Division in January, 1900, on a case stated by Justices of London sitting in Quarter Sessions, it appeared that a school erected by the school board was included in a supplemental valuation list for the parish of Clapham, at a gross value of 1074*l.* and a rateable value of 895*l.* The gross value was arrived at by adding 4 per cent. on the sum given by the board as the value of the land on which the school was built to 5 per cent. on the sum given by the board as the capital value of the buildings. The Court of Quarter Sessions confirmed the assessment. It was found by the case that the buildings were more suitable for educational purposes than for any other, and that though they might be occupied for purposes other than those of a school they would not be so convenient for any such purposes without alterations, but that if the buildings were vacant, a tenant or tenants could be found to give on an annual letting a rent sufficient to support the assessment. The case further stated that the school board had borrowed the money for purchasing the land which formed the site of the school and for building the school at the rate of 2*l.* 13*s.* per cent. It was argued for the school board that the proper principle of assessment was to take as the gross value the rate per cent. on the capital value of the land and buildings at which the school board would be able to borrow money for the purpose of purchasing such land and erecting such buildings. In the present case that rate per cent. would be 2*l.* 13*s.*, not 4*l.* per cent. or 5*l.* per cent. which the assessment committee had adopted. The Court (Grantham and Channell, JJ.) dismissed the appeal. Mr. Justice Grantham said: "It might just as well be said that if a person interested in education were to lend money for a school to the school board at 1 per cent., then the gross value of such a school would be arrived at by taking 1 per cent. of the capital value, or that if money were lent for the purpose free of interest altogether, then the school should be valued at nothing at all."

In a case where a school board claimed that they were not liable to assessment to the income tax in respect of their offices on the ground that rule 6 in sec. 61 of the Income Tax Act, 1842, provides that allowance shall be made for the duties charged on any public school in respect of the offices belonging to such school, the Board of Inland Revenue stated that it appeared that the building occupied and used as offices by the school board was not in any way connected with or attached to any of the board schools of the district for the use of the scholars, and that under these circumstances in the opinion of the Board of Inland Revenue the premises were not of the character described by the word "offices" in the Act referred to, and that the school board were not entitled to the exemption claimed.

It is to be observed that there is an exemption from rating in the case of public elementary schools not provided by a Local Education Authority. The Voluntary Schools Act, 1897 (60 Vict., c. 5, *post*), provides that "no person shall be assessed or rated to or for any local rate in respect of any land or buildings used exclusively or mainly for the purposes of the schoolrooms, offices, or playground

of a voluntary school, except to the extent of any profit derived by the managers of the school from the letting thereof."

In *Trustees of the Jews Deaf and Dumb Home, Wandsworth v. Wandsworth and Clapham Union Assessment Committee*, 65 J. P. 137, which came before the County of London Quarter Sessions in February, 1901, the Trustees claimed that under sec. 3 of the Voluntary Schools Act, 1897, they were only liable to be assessed in respect of so much of the premises occupied as a Deaf and Dumb Home as were not used exclusively or mainly for the purposes of schoolrooms, offices, or playgrounds. The income of the institution was partly from voluntary subscriptions and donations. The trustees also received contributions from the London School Board and other school boards and a grant from the Board of Education under the Elementary Education (Blind and Deaf Children) Act, 1893, in respect of the reception, maintenance, and education by them of children sent to the home under that Act. The home was certified for the education, boarding, and lodging of 54 deaf children of both sexes, and for the education of 20 of such children as day pupils. All the children in the home, except 3, were sent by school boards. The appeal of the trustees was dismissed.

There is no exemption from liability to assessment in the case of Certified Industrial Schools (*R. v. West Derby*, 44 L. J. M. C. 98; 32 L. T., N. S., 400; *County of Durham v. Chester le Street Assessment Committee*, 63 L. T. 461), or in the case of Reformatory Schools (*Tunncliffe v. Overseers of Birkdale*, L. R. 20 Q. B. D. 450; 57 L. J. M. C. 109; 59 L. T., N. S., 190; 36 W. R. 360).

As to the rating of Sunday and ragged schools, see 32 & 33 Vict., c. 40, and *Bell v. Crane* (L. R. 8 Q. B. 481; 42 L. J. M. C. 122).

With regard to private street expenses under sec. 150 of the Public Health Act, 1875, where a school abuts on a highway not repairable by the inhabitants at large, it was held by Mr. Justice Kekewich, in *Hornsey District Council v. Smith* ([1896] 2 Ch. 254; 65 L. J. Ch. 579; 74 L. T. 415; 44 W. R. 96) that the trustees of school premises erected on glebe land which was conveyed to them under sec. 6 of the School Sites Act, 1841, to be applied as a site for a school for poor persons of the parish and for no other purpose whatever, are "owners" within the meaning of sec. 4 of the Public Health Act, 1875; that when the trustees had made default in payment of the amount due to a district council in respect of private street paving works, they were liable under sec. 257 of the Act to a declaration by the Court that the amount so due from the trustees, together with interest, was a charge on the land and school buildings, and that the amount might be raised by sale or mortgage of the premises free from incumbrances and the trusts of the school. The trustees appealed against this judgment, and the Court of Appeal (Lindley, A. L. Smith, and Rigby, L.JJ.) confirmed the decision of Mr. Justice Kekewich as regards the district council having a charge upon the premises, but held that the order for sale must be set aside on the ground that as long as the premises remained a site for the school and were used as such, the Court by ordering a sale would be acting in direct contravention of the special legislation of 1841. It was at the same time stated that the district council had a remedy against the trustees under the Public Health Act, 1875, but that the time for the exercise of this remedy had in this case expired ([1897] 1 C. D. 865; 45 W. R. 231).

*Compulsory Purchase of Sites.—Regulations as to the
Purchase of Land compulsorily.*

20. With respect to the purchase of land by school boards for the purposes of this Act the following provisions shall have effect (that is to say):

- (1.) The Lands Clauses Consolidation Act, 1845, and the Acts amending the same, shall be incorporated with this Act, except the provisions relating to access to the special Act; and in construing those Acts for the purposes of this section, the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to mean the school board, and land shall be construed to include any right over land: (1)
- (2.) The school board, before putting in force any of the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, shall—

Publication of Notices.

- (a.) Publish, during three consecutive weeks in the months of October and November, or either of them, a notice describing shortly the object for which the land is proposed to be taken, naming a place where a plan of the land proposed to be taken may be seen at all reasonable hours, and stating the quantity of land that they require; (2) and shall further,

Service of Notices.

- (b.) After such publication, serve a notice in manner mentioned in this section on every owner or reputed owner, lessee or reputed lessee, and occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such land; (3)

(c.) Such notice shall be served—

(a.) By delivery of the same personally on the person required to be served, or, if such person is absent abroad, to his agent (4) ; or

(b.) By leaving the same at the usual or last known place of abode of such person as aforesaid, or by forwarding the same by post in a registered letter, addressed to the usual or last known place of abode of such person :

Petition to Education Department.

- (3.) Upon compliance with the provisions contained in this section with respect to notices the school board may, if they think fit, present a petition under their seal to the Education Department, praying that an order may be made authorizing the school board to put in force the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, so far as regards the land therein mentioned ; the petition shall state the land intended to be taken and the purposes for which it is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking of such land, or who have returned no answer to the notice, and shall be supported by such evidence as the Education Department may from time to time require : (5)
- (4.) If, on consideration of the petition and proof of the publication and service of the proper notices, the Education Department think fit to proceed with the case, they may, if they think fit, appoint some person to inquire in the district in which the land is situate respecting the propriety of the proposed order, and also direct such person to hold a public inquiry :
- (5.) After such consideration and proof, and after receiving a report made upon any such inquiry, the Education Department may make the order prayed for, authorizing the school board to put in force with reference to the land referred to in such order the powers of the said Acts with respect to

the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as they may think fit, and it shall be the duty of the school board to serve a copy of any order so made in the manner and upon the persons in which and upon whom notices in respect of the land to which the order relates are required by this Act to be served : (6)

No Order valid until confirmed by Parliament.

- (6.) No order so made shall be of any validity unless the same has been confirmed by Act of Parliament ; and it shall be lawful for the Education Department, as soon as conveniently may be, to obtain such confirmation, and the Act confirming such order shall be deemed to be a public general Act of Parliament : (7)
- (7.) The Education Department, in case of their refusing or modifying such order, may make such order as they think fit for the allowance of the costs, charges, and expenses of any person whose land is proposed to be taken of and incident to such application and inquiry respectively :

Costs how to be defrayed.

- (8.) All costs, charges, and expenses incurred by the Education Department in relation to any order under this section shall, to such amount as the Commissioners of Her Majesty's Treasury think proper to direct, and all costs, charges, and expenses of any person which shall be so allowed by the Education Department as aforesaid shall become a charge upon the school fund of the district to which such order relates (8), and be repaid to the said Commissioners of Her Majesty's Treasury or to such person respectively, by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred to be computed from the date of any such direction of the said Commissioners, or allowance of such costs, charges, and expenses

respectively upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid.

The School Sites Acts as defined in the fourth schedule to this Act shall apply in the same manner as if the school board were trustees or managers of a school within the meaning of those Acts, and land may be acquired under any of the Acts mentioned in this section, or partly under one and partly under another Act. (9)

(1) As to proposals for the erection of new schools or the enlargement of schools by Local Education Authorities, appeals against such proposals and the decision of the Board of Education thereon, see secs. 8 & 9 of 2 Edw. 7, c. 42, *ante*.

The Lands Clauses Consolidation Act, 1845, and amending Acts are the 8 Vict., c. 18; 23 & 24 Vict., c. 106; 32 & 33 Vict., c. 18; and 46 & 47 Vict., c. 15. It will be observed that the section only applies to lands required by Local Education Authorities. Sec. 21, however, contains provisions with regard to the purchase of lands required for a public elementary school not provided by the Local Education Authority.

The 36 & 37 Vict., c. 86, sec. 15, *post*, provides that for the purchase of land otherwise than by agreement, the Act confirming the order of the Board of Education for the purchase, together with this Act, is to be deemed the "Special Act."

Under the clauses relating to the purchase of lands *by agreement*, parties under disability are empowered to sell and convey the lands or interest in lands required. The compensation to be paid to persons under disability, unless the amount has been determined by the verdict of a jury or by arbitration, or by a surveyor appointed by two justices under the Act, is not to be less than shall be determined by the valuation of two able practical surveyors, one being nominated by each of the parties, or if the two surveyors cannot agree, by the valuation of any such third surveyor as any two justices shall for that purpose nominate.

When land is purchased *otherwise than by agreement*, that is to say, compulsorily, if the compensation claimed does not exceed 50*l.*, the claim may be settled by two justices; when the compensation claimed or offered exceeds 50*l.*, if the party claiming the compensation so desire it, the claim may be settled by arbitration, and if not, by the verdict of a jury. If the amount of compensation is to be determined by arbitration, unless both parties concur in the appointment of one arbitrator, each party is to appoint an arbitrator, and the arbitrators are to appoint an umpire. When the question is to be determined by the verdict of a jury, the jury is to be summoned by the sheriff, who is to preside at the inquiry. Either party may require that the question shall be tried by a special jury. In the case of a person who has no greater interest than as tenant for a year, or from year to year, the amount of compensation, if the parties differ, may be settled by two justices. The purchase of land *otherwise than by agreement* can only be made when an order has been issued by the Board of Education authorizing the purchase, as provided by this section, and has been confirmed by Parliament.

As to the right of way over other lands of the vendor when the contract for the sale to a school board of certain lands with all that was appurtenant or appendant to them, contained no reference to an alleged right of way, see *Bolton v. Bolton* (L. R. 11 Ch. D. 968; 48 L. J. Ch. 467; 40 L. T., N. S., 582).

(2) The Board of Education stated that unless a special order had been issued by the Board prescribing the manner of publication required by this section the publication must be made in the manner prescribed by sec. 20 of the 36 & 37 Vict., c. 86, *post*, *i.e.*, by advertisement, *and* by affixing notices on the church and other doors. These two methods of publication should be as nearly as possible concurrent. As to publication in newspapers, the Board of Education, referring to school boards other than the school board for London, stated that they were satisfied with publication by advertisement in one or more weekly newspapers circulating in the district of the school board, if the publication had been completed during three consecutive weeks in the months of October and November, or either of them (*e.g.*, advertisement in one or more newspapers on the 9th, 16th, and 23rd of November would be accepted).

It will be observed that a plan is to be deposited, and in connection with this provision attention must be given to the requirements of the Standing Orders of Parliament. No. 39 of the Standing Orders of the House of Commons is as follows.—“Whenever plans, sections, books of reference, or maps are deposited in the case of an application to any public department for a provisional order, duplicates of the said documents shall also be deposited in the Private Bill Office; provided that with regard to such deposits as are so made at any public department . . . after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on or before the 30th day of November.” There is a Standing Order of the House of Lords to the same effect, with the substitution of “the office of the Clerk of the Parliaments” for the “Private Bill Office.” The Standing Orders contain provisions as to the form in which plans, books of reference, &c., are to be prepared.

When it is proposed to obtain powers to take compulsorily in any parish in the metropolis twenty or more houses, or as regards England and Wales, exclusive of the metropolis, in any city, borough, or other urban district, or in any parish or part of a parish not being within an urban district, ten or more houses occupied either wholly or partially by persons belonging to the labouring class, whether as tenants or lodgers, Standing Orders Nos. 38 and 183 (a) of the House of Commons and the corresponding Standing Orders of the House of Lords should be referred to, and their requirements complied with.

The expression “labouring class” means mechanics, artisans, labourers and others working for wages, hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others except members of their own family, and persons other than domestic servants, whose income does not exceed an average of thirty shillings a week, and the families of any such persons who may be residing with them.

(3) The word “owner” under the 8 Vict., c. 18, sec. 3, is to be understood to mean any person or corporation who, under that or the Special Act, would be enabled to sell and convey lands to the

promoters of the undertaking. That statute does not contain any reference to "reputed owners."

(4) The words "absent abroad" are no doubt intended to signify in foreign parts. In the 8 Vict., c. 18, sec. 19, the words used are "absent from the United Kingdom." In some cases it may be difficult to determine who is the agent of a person absent abroad. Under the 8 Vict., c. 18, in the case of a person absent from the United Kingdom the notice under that Act is to be served upon the occupier of the land, or to be affixed upon some conspicuous part of the land.

(5) The petition should be presented to the Board of Education as early as possible in January, in order that the Provisional Order may be confirmed in the following Session.

The petition must state precisely the purpose for which the land is required, and the other matters which are required by sec. 20 to be stated, and should be accompanied by plans.

If more than one site is referred to in the same petition, the purpose must be stated separately for each site, being set forth in a schedule and numbered to correspond with the plans, and the plans of each site should be on separate papers. The petition need not be engrossed, and may be written on ordinary foolscap paper. In a letter accompanying the petition reference must be made in respect of each site included in the petition to the official correspondence previously had with the Board of Education as to the supply of the accommodation for which the site is required.

When the petition is presented to the Board of Education the following documents are required as evidence in support of the petition. (a) A Statutory Declaration stating when, and in what newspapers, the notice was advertised, with a copy of the paper annexed as an exhibit. The declaration must also show that a copy of the notice was affixed on the church and other doors according to sec. 20 of the Elementary Education Act, 1873; and (b) a similar declaration setting forth the service of the several notices upon the different parties and their answers. Each of these declarations requires a stamp (2s. 6d.).

The Board require to be informed that at the same time as the deposit of the petition was made with them the Standing Orders of the Houses of Parliament had been complied with.

The following further evidence will be required in support of the petition—(a) Evidence that the purchase of land is necessary in order to supply a deficiency of school accommodation, or for other purposes of the Elementary Education Acts. (b) Evidence that a plan of the land to be purchased has been submitted to, and approved by the Board of Education; and (c) Evidence that the land so required cannot be purchased by voluntary agreement.

With regard to a public inquiry, see sec. 73.

(6) See *ante*, sub-sec. 2 (b) and (c).

If the petition is complied with, and the order made, a copy of the order must be served on all the persons interested as prescribed by sub-sec. 5, and on receipt of a statutory declaration of such service duly stamped the Board of Education present the Confirming Bill to Parliament and conduct it through the various stages.

The authority are informed by the Board of Education when the Bill is presented to Parliament and again when it has received the Royal Assent.

(7) Some of the Acts authorizing the issue of provisional orders by Government Departments contain a clause to the effect that in case any petition shall be presented to either House of Parliament against a provisional order in the progress through Parliament of the Bill confirming the order, the Bill, so far as it relates to the order so petitioned against, may be referred to a select committee, and the petitioners shall be allowed to appear and oppose as in the case of private Bills. There is not, it will be observed, any such provision with regard to the provisional orders under this section. The Standing Orders of the House of Commons, however, include the following order: "Every petition against any Bill to confirm any provisional order which shall have been deposited in the Private Bill Office not later than seven clear days after the examiner shall have given notice of the day on which the Bill will be examined or which shall otherwise have been deposited in accordance with the Standing Orders of the House, and in which the petitioners shall have prayed to be heard by themselves, their counsel or agents, shall stand referred to the committee on such Bill, and such petitioners, subject to the rules and orders of the House, shall be heard upon their petition accordingly, if they think fit, and counsel heard in favour of the Bill, against such petition." There is also a Standing Order of the House of Lords that "every Provisional Order Confirmation Bill which is opposed shall be referred to a Select Committee of five."

In the sessions of 1872-1902 the following Acts were passed confirming orders of the Education Department and Board of Education for the compulsory purchase of land by school boards:—

35 & 36 Vict., c. lxxv. (London).

36 & 37 Vict., c. xxii. (Caterham); c. xxiii. (London); c. xxxvi. (Llanrwst); c. xxxviii. (Llanelly); c. xxxix. (Merthyr Tydvil); and c. ccxiv. (London).

37 & 38 Vict., c. cliii. (Brighton, Aberdare, and United District of Caerhun, Llanbedr y Cennin and Dolgarrog; and c. clxxxiv. (London).

38 & 39 Vict., c. vii. (Caister (Norfolk) and Rochford); c. viii. (Brighton); and cc. cxxii. and cxxiv. (London).

39 & 40 Vict., c. cliii. (Hailsham, Ilchester, Ingham, Slaugham, Swansea United District, and Swansea Parish Higher and Lower); c. cliv. (Hornsey); c. clx. (Tolleshunt Major); c. cxvii. (Cardiff); and c. ccxxxix. (London).

40 & 41 Vict., c. lxxv. (Cardiff, East and West Teignmouth United District, Holywell, extra municipal, Hornsey, Merthyr Tydvil, and Ystradgunlais Lower); c. civ. (London); c. cxix. (Felmingham and Kelvedon Hatch United District).

41 & 42 Vict., c. lviii. (Mickleover); c. cvii. (Portsmouth); c. cx. (Birmingham, Lewannick (Cornwall), and Mold (Flint)); c. cxi. (London).

42 & 43 Vict., c. lviii. (Brighton and Preston, Gotherington, Loughor Borough, and Membury); and c. lix. (London).

43 & 44 Vict., c. liv. (Cardiff, Liverpool, Southampton, and Walton-on-Thames); c. ccv. (London).

- 44 & 45 Vict., c. clxiv. (Clay Lane) ; c. clxvii. (London).
 45 & 46 Vict., c. cii. (West Ham (Essex) and Terrington St. John (Norfolk)) ; c. cxxxix. (Finchley, Llanarth, and Upper Dylais) ; c. cxli. (London).
 46 & 47 Vict., c. xlii. (Cummingsdale (Cumberland), Hayfield (Derbyshire), Little Eaton (Derbyshire), Stroud (Gloucestershire), and Treudyn (Flintshire)) ; c. cxxxii. (London).
 47 & 48 Vict., c. ciii. (London).
 48 & 49 Vict., c. cxxix. (Birmingham, Bradford (Yorks.), Cardiff, Derby, and Llanwonno) ; c. lxxxix. (London).
 49 & 50 Vict., c. i. (Birmingham) ; c. ii. (London).
 50 & 51 Vict., c. cxix. (Christchurch, extra municipal, Monmouth) ; c. cxx. (London).
 51 & 52 Vict., c. cxxiii. (Birmingham) ; c. clxv. (London).
 52 & 53 Vict., c. xvi. (Acton, Chiswick, and Liverpool) ; c. lxiii. (Leake) ; c. lxxiii. (London).
 53 & 54 Vict., c. cii. (London) ; c. ciii. (West Ham).
 54 & 55 Vict., c. lv. (West Ham, &c.) ; c. cli. (London).
 55 & 56 Vict., c. ccxviii. (London).
 56 & 57 Vict., c. cxxvi. (Chiswick, &c.) ; c. cxci. (London) ; c. cxcii. (London, No. 2).
 57 & 58 Vict., c. cxci. (London) ; c. cxcv. (Barry, &c.).
 58 & 59 Vict., c. l. (Acton) ; c. li. (Bristol) ; c. lii. (Croydon) ; c. liii. (Hornsey) ; c. liv. (Leeds) ; c. lv. (Liverpool) ; c. lvi. (Llangollen) ; c. lvii. (Longbenton) ; c. lviii. (Lowestoft) ; c. lix. (Manchester) ; c. lx. (Pwllhel) ; c. lxi. (Weston-super-Mare) ; c. lxii. (Wilmington).
 59 Vict., c. iii. (London).
 59 & 60 Vict., c. ii. (Tottenham) ; c. clxiv. (Acton, &c.) ; c. clxxiii. (London).
 60 & 61 Vict., c. cxlvi. (East Barnet, Linthwaite, Pembroke, Swansea United District, and Willesden) ; c. cxlvii. (London).
 61 & 62 Vict., c. lxxxv. (Barnes, Cellan, Heston, Llanelly, and Low Leyton) ; c. cciv. (London).
 62 & 63 Vict., c. xxiv. (Swansea United District) ; c. xxxi. (Aberavon, Croydon, Walthamstow, and Willesden) ; c. cxxvii. (Liverpool) ; c. cclxxvi. (London).
 63 & 64 Vict., c. lix. (Brighton and Preston United District, Liverpool, Plymouth, Salford, and Willesden) ; c. cxcii. (London).
 1 Edw. 7, c. xxxiv. (Acton) ; c. cclxxviii. (London) ; c. clxxiii. (Barnes, Hartlepool, Manchester, Merthyr Tydvil, and Walthamstow).
 2 Edw. 7, c. cxvii. (Barnes, Epping, Liverpool, Manchester, Swansea United District) ; c. ccxi. (London).

The fact that application for a provisional order for the compulsory purchase of land has been made, and that the order has been issued and confirmed by Parliament, does not impose on the authority a legal obligation to purchase the land. The notice under sub-sec. 2 (b) creates no contract between the parties : *Burgess v. Bristol Urban Sanitary Authority*, 50 J. P. 455.

In *Rolls v. School Board for London* (L. R. 27 Ch. D. 639 ; 51 L. T. 567 ; 33 W. R. 129) it appeared that the school board, in pursuance of the powers conferred on them by a provisional order which had been confirmed by Parliament, served on R. the customary notice to treat. Prior, however, to the service of this notice and prior to the confirmation of the provisional order by Parliament, the school board had entertained and adopted, subject to the sanction of the Education

Department, a proposal from one B., a neighbouring landowner, for exchanging a portion of the land to be acquired by the board from R., for a piece of B.'s land, he undertaking to form the land so to be conveyed to him into a public road. There was evidence to show that such road when made would be advantageous to the school proposed to be erected. It was held on the motion of R. to restrain the board from putting in force their statutory powers with respect to so much of the land comprised in the notice to treat as they proposed to convey to B., that the school board were justified in the course they had taken, and could, if they obtained the sanction of the Education Department, carry out their proposal.

In the case of *Clark v. The School Board for London* (L. R. 9 Ch. App. 120; 43 L. J. Ch. 421), an injunction was granted by Vice-Chancellor Malins to restrain the defendants from building on land which they had acquired under an order under this section, in such a manner as to interfere with the rights of an adjoining proprietor with regard to light and air, although the defendants were willing to pay compensation under sec. 68 of the Lands Clauses Consolidation Act. On appeal to the full Court the decision was reversed. The Lord Chancellor said:—The Legislature, in authorizing school boards for the public advantage to exercise the large powers conferred upon them, meant to invest in them a discretion answerable to the importance of the case. When for these important purposes compulsory powers of taking land were given to them, he could not but think that it was intended they should have the full benefit of all the compulsory powers contained in the Lands Clauses Acts; that they should be able to erect buildings on the land they acquired upon such a plan, of such a height, and in such a way as they should in the exercise of their discretion think proper. This view was confirmed by the language of secs. 19 and 20 of the Act, which spoke of purchasing any right over land, and said that "land" was to be construed as including "any right over land." These were large words, and, according to their reasonable construction, seemed to give to the board the land which they acquired free from any *jus tertii*. The right to light could only be acquired by twenty years' user, and it came strictly within the words "right over land." Such a right, if interfered with, must be the subject of compensation, and the only question seemed to be in what way that compensation was to be ascertained—whether a purchasing notice must be given by the board, or whether the compensation was to be determined under those sections of the Lands Clauses Acts which relate to land not taken by the promoters of an undertaking, but injuriously affected by their works. The sound view in his opinion was that the construction of the sections of the Lands Clauses Acts which related to compensation was not altered by secs. 19 and 20 of the Education Act. The provisions of sec. 84 of the Lands Clauses Act as to entry on land were inapplicable to such a thing as a right to light. But those clauses which related to compensation for land injuriously affected appeared to be exactly applicable to a right of this kind. There was previous authority for this view in some cases which had been decided upon the Thames Embankment Acts, such as *Macey v. The Metropolitan Board of Works*, before Lord Hatherley, when Vice-Chancellor (32 L. J. Chan.).—Lord Justice Mellish said the school board were only to purchase the land necessary for the school, and he thought therefore they had no compulsory power of purchasing any lands not necessary for that purpose. This was made clearer by

the use of the words "any right over land." The Legislature meant to say—"In order that you may be perfectly unfettered in building your school, you may purchase any right that any one has over the land which you buy;" and sec. 20 gave them power to do this compulsorily if it could not be done by agreement. He agreed in thinking that this made no difference with regard to the course to be adopted to obtain compensation.

In *Kirby v. School Board for Harrogate* ([1896] C. A., 1 Ch. 437; 74 L. T. 6; 65 L. J. Ch. 396; 44 W. R. 144), it was held by the Court of Appeal that when a school board had acquired land by agreement for the purpose of providing a school under the Elementary Education Acts, they could exercise their statutory powers of building without regard to any restrictive covenants affecting the land, in the same manner as if they had acquired the land under compulsory powers. The only remedy of persons whose lands were injuriously affected thereby was to obtain compensation under sec. 68 of the Lands Clauses Consolidation Act, 1845.

In *The London County Council v. The London School Board* ([1892] 2 Q. B. 606; 40 W. R. 604), it appeared that under a Provisional Order of the Education Department, confirmed by Parliament, certain land was acquired by the London School Board otherwise than by agreement for the purpose of providing public school accommodation for the district, and in laying out part of the land as a playground, the fence was brought within 20 feet of the centre of a highway. The London County Council instituted proceedings against the school board on the ground that the bringing forward of the fence as stated without the consent of the County Council was in contravention of the Metropolis Management and Building Acts Amendment Act, 1878 (41 & 42 Vict., c. 32). It was alleged that if the fence were set back the playground would not be large enough to comply with the rules for the number of children for whose accommodation the school-house was required. The case was dismissed by the magistrate on the ground that Parliament having sanctioned the taking of the land for the purpose of the Elementary Education Acts, the school board were entitled and bound to use the whole of the ground so taken for the purposes of those Acts, and that the Act confirming the Provisional Order repealed sec. 6 of the 41 & 42 Vict., c. 32, so far as it related to that land. On a case stated for the opinion of the High Court, the decision of the magistrate was upheld. It was held that on the construction of the Elementary Education Act, 1870, and the Act confirming the Provisional Order, the school board had the power to purchase the whole of the site and to apply any part of the land to an authorized school purpose, provided that they did so in good faith.

With regard to the compensation which may be payable for injuriously affecting land other than that acquired for a school by reason of the noise made by school children on their way to and from and outside the school, see *R. v. Pearce ex parte* (67 L. J. Q. B. 842; 78 L. T. 681). In that case it appeared that the London School Board had under a Provisional Order powers for the compulsory purchase for the site of a school of a part of certain land at Paddington of which the claimant was the owner, and which he had developed as a building estate. Upon the inquisition held by the Under Sheriff as to the claim to compensation and for damage for injuriously affecting other hereditaments by reason of the execution of the works, the claimant proposed to give evidence that the houses erected and to be

erected upon the land adjoining the portion taken by the school board would be injuriously affected and would deteriorate in value by reason of the noise occasioned by children outside the building of the board school. For the school board it was objected that no evidence could be given under this head, and that a deterioration in value alleged to be caused by the noise made by school children in the roadway on their way to and from and outside the board school building was not a subject for compensation. The jury by their verdict assessed the compensation for the purchase and value of the land at 2690*l.*, and by agreement separately assessed the compensation under the head of injuriously affecting other hereditaments of the claimant at 1000*l.* A rule nisi for a certiorari was obtained by the school board for bringing up and quashing the inquisition verdict and judgment so far as it related to the sum of 1000*l.* The Court (Day and Lawrance, JJ.) discharged the rule. Mr. Justice Day said: The question whether really substantial damage be or be not occasioned by the existence of the school is one for the jury. In accordance with the principles of the law laid down in many cases and with what has been the constant practice for many years in cases of this description, the question was left to the jury to say whether in their opinion the presence of a school carried on according to the usual plan in which schools must necessarily be carried on in the Metropolis is calculated to injure other lands of the claimants in the vicinity of the particular plot of land taken for the building. There seems to be no ground for disturbing their finding in this case or for saying that the jury were not entitled to find as they have found that the adjoining land of the plaintiff will be injured by the erection of the school on land which is taken compulsorily.

The Disused Burial Ground Act precludes the erection of a school on a part of a cemetery which has been closed for interments, although interments may not have taken place in that part. *Ponsford v. Newport School Board* ([1894] C. A., 1 Ch. 454; 63 L. J. Ch. 278; 42 W. R. 258; 70 L. T. 502)

(8) The case *Re Morley* (32 L. T., N. S., 524) raised the question as to the scale on which costs are to be charged with respect to Provisional Orders. The case referred to the taxation by the taxing master of the costs of Messrs. Morley and Shirreff incidental to procuring a provisional order for the construction of a tramway from Ipswich to Felixstowe, in Suffolk. The master had only allowed costs at the rate of the charges made in the courts of law, and it was contended that he ought to have allowed such costs upon the scale charged in the case of a private Bill to be passed through the Houses of Parliament. The ground on which the master had proceeded was that the work charged for was not in relation to the proceedings in Parliament, but anterior thereto, and such as, had the preliminary inquiry failed, would never have resulted in any parliamentary proceedings. The application was for an order to refer back to the taxing master to revise his taxation; but the Master of the Rolls decided that these bills of costs were not to be taxed according to the parliamentary scale, but according to the scale adopted in the courts of law, and the summons was therefore dismissed.

References to the "school fund" are to be construed as references to the fund out of which the expenses of the Local Education Authority are payable. See Third Schedule (2) to 2 Edw. 7, c. 42, *ante*.

(9) The School Sites Acts referred to are the 4 & 5 Vict., c. 38 ; 7 & 8 Vict., c. 37 ; 12 & 13 Vict., c. 49 ; 14 & 15 Vict., c. 24. These several Acts will be found in the Appendix, p. 471.

Purchase of Land by Managers of Public Elementary School.

21. For the purpose of the purchase by the managers of any public elementary school of a schoolhouse for such school, or a site for the same, "the Lands Clauses Consolidation Act, 1845," and the Acts amending the same (except so much as relates to the purchase of land otherwise than by agreement), shall be incorporated with this Act ; and in construing those Acts for the purposes of this section, the special Act shall be construed to mean this Act ; and the promoters of the undertaking shall be construed to mean such managers, and land shall be construed to include any right over land. (1)

The conveyance of any land so purchased may be in the form prescribed by the School Sites Acts, or any of them, with this modification, that the conveyance shall express that the land shall be held upon trust for the purposes of a public elementary school within the meaning of this Act, or some one of such purposes which may be specified, and for no other purpose whatever. (2)

Land may be acquired under the Acts incorporated with this section, or under the School Sites Acts, or any of them, or partly under one and partly under another Act.

Any persons desirous of establishing a public elementary school (3) shall be deemed to be managers for the purpose of this section if they obtain the approval of the Education Department to the establishment of such school.

(1) For definition of the term "managers," see sec. 3.

As to the provisions of the Lands Clauses Consolidation Acts with regard to the purchase of land by agreement, see note 1 on sec. 20.

With regard to the provision of new schools or the enlargement of schools, see secs. 8 and 9 of 2 Edw. 7, c. 42, *ante*.

(2) The School Sites Acts will be found in the Appendix, p. 471.

(3) As to the term "public elementary school," see sec. 7. and notes thereon.

Sale or Lease of Schoolhouse.

22. The provisions of the Charitable Trusts Acts, 1853 to 1869, which relate to the sale, leasing, and exchange of

lands belonging to any charity, shall extend to the sale, leasing, and exchange of the whole or any part of any land or schoolhouse belonging to a school board which may not be required by such board, with this modification, that the Education Department shall, for the purposes of this section, be deemed to be substituted in those Acts for the Charity Commissioners.

The Local Education Authority are the successors of the school board, and a school provided by a school board is to be deemed to be provided by the Local Education Authority.

The Charitable Trusts Acts, 1853 to 1869, are the 16 & 17 Vict., c. 137; 18 & 19 Vict., c. 124; 23 & 24 Vict., c. 136; 25 & 26 Vict., c. 112; and 32 & 33 Vict., c. 110. See also sec. 78 and 50 & 51 Vict., c. 49.

See also sec. 2 (2) of the Board of Education Act, 1899 (62 & 63 Vict., c. 33, *post*), as to the exercise by the Board of Education of other powers of the Charity Commissioners under the Charitable Trusts Acts.

Managers may transfer School to School Board.

23. The managers of any elementary school in the district of a school board may, in manner provided by this Act, make an arrangement with the school board for transferring their school to such school board, and the school board may assent to such arrangement. (1)

An arrangement under this section may be made by the managers by a resolution or other act as follows (that is to say):

- (1.) Where there is any instrument declaring the trusts of the school, and such instrument provides any manner in which, or any assent with which, a resolution or act binding the managers is to be passed or done, then in accordance with the provisions of such instrument:
- (2.) Where there is no such instrument, or such instrument contains no such provisions, then in the manner and with the assent, if any, in and with which it may be shown to the Education Department to have been usual for a resolution or act binding such managers to be passed or done:
- (3.) If no manner or assent can be shown to have been usual, then by a resolution passed by a majority of not less than two-thirds of those members of their body who are present at a meeting of the body summoned for the purpose, and vote on the

question, and with the assent of any other person whose assent under the circumstances appears to the Education Department to be requisite.

And in every case such arrangement shall be made only—

- (1.) With the consent of the Education Department ; and,
- (2.) If there are annual subscribers to such school, with the consent of a majority, not being less than two-thirds in number, of those of the annual subscribers who are present at a meeting duly summoned for the purpose, and vote on the question.

Provided that where there is any instrument declaring the trusts of the school, and such instrument contains any provision for the alienation of the school by any persons or in any manner or subject to any consent, any arrangement under this section shall be made by the persons in the manner and with the consent so provided.

Where it appears to the Education Department that there is any trustee of the school who is not a manager, they shall cause the managers to serve on such trustee, if his name and address are known, such notice as the Education Department think sufficient ; and the Education Department shall consider and have due regard to any objections and representations he may make respecting the proposed transfer. (2)

The Education Department shall consider and have due regard to any objections and representations respecting the proposed transfer which may be made by any person who has contributed to the establishment of such school. (3)

After the expiration of six months from the date of transfer the consent of the Education Department shall be conclusive evidence that the arrangement has been made in conformity with this section.

An arrangement under this section may provide for the absolute conveyance to the school board of all the interest in the schoolhouse possessed by the managers or by any person who is trustee for them or for the school, or for the lease of the same, with or without any restrictions, and either at a nominal rent or otherwise, to the school board, or for the use by the school board of the school house during part of the week, and for the use of the same by the managers or some other person during the remainder

of the week, or for any arrangement that may be agreed on. The arrangement may also provide for the transfer or application of any endowment belonging to the school, or for the school board undertaking to discharge any debt charged on the school not exceeding the value of the interest in the schoolhouse or endowment transferred to them. (4)

When an arrangement is made under this section the managers may, whether the legal interest in the schoolhouse or endowment is vested in them or in some person as trustee for them or the school, convey to the school board all such interest in the schoolhouse and endowment as is vested in them or in such trustee, or such smaller interest as may be required under the arrangement. (4)

Nothing in this section shall authorize the managers to transfer any property which is not vested in them, or a trustee for them, or held in trust for the school; and where any person has any right given him by the trusts of the school to use the school for any particular purpose independently of such managers, nothing in this section shall authorize any interference with such right except with the consent of such person.

Every school so transferred shall, to such extent and during such times as the school board have under such arrangement any control over the school, be deemed to be a school provided by the school board. (5)

(1) For definition of the term "managers," see sec. 3.

The references to a school board and school district are to be construed as references to the Local Education Authority and the area for which they act (2 Edw. 7, c. 42, Third Schedule (1), *ante*).

The Board of Education have no power to compel the transfer of any school to a Local Education Authority under this section, but their consent is necessary to the terms of transfer.

For the purposes of sec. 8 of the 2 Edw. 7, c. 42, the transfer of a school is to be treated as the provision of a new school. The provisions of that section and of sec. 9 of the Act as to public notice of the proposal, appeal to Board of Education, &c., therefore apply (2 Edw. 7, c. 42, sec. 8 (3)).

When a school has been transferred to a school board under this section, the school is to be treated as provided by the Local Education Authority (2 Edw. 7, c. 42, Second Schedule (13)) so long as it has not been retransferred under sec. 24.

The Committee of Council on Education, on the 17th July, 1871, adopted the following resolutions with reference to applications for the transfer of elementary schools under this section:—

"1. In the case of premises held under a trust, express or implied, the following rules shall be observed:

(1.) All questions relating to the title of the parties to the proposed arrangement, or affecting the subject-matter upon which it

is to operate, must be considered and settled by the legal advisers of the parties, and will not be investigated by the Education Department.

- (2.) In considering whether any proposed arrangement should be approved, the Department will confine their attention to ascertaining that the terms of such arrangement are, in their opinion, proper and reasonable, and the approval expressed in any case will be limited accordingly.
- (3.) As to the terms of the arrangement,—no payment of rent beyond that charged upon or reserved out of the premises by the original lease, and no other valuable consideration, except an undertaking to insure and keep the premises in repair, and to keep down or redeem charges or incumbrances on the same will in general be sanctioned.

“II. Arrangements with respect to schools which are private property must be settled by the proprietors of the premises and the school boards, under sec. 19 of the Act, and do not require the intervention of the Department.”

As to the terms of arrangement which may be made under this section, see also note 4, p. 247.

The School Sites Act, 1841 (4 & 5 Vict., c. 38), by sec. 14, provides that “where a portion of any parliamentary grant shall have been or shall be applied towards the erection of any school, no sale or exchange thereof shall take place without the consent of the Secretary of State for the Home Department for the time being.” The question has been raised whether this provision rendered necessary the sanction of the Home Secretary to the transfer to a school board, under sec. 23 of this Act, of a school for the erection of which a contribution was received from the parliamentary grant. The transfer is clearly not a “sale or exchange” within the meaning of the School Sites Act, and therefore the sanction of the Secretary of State was not required.

(2) In *Re Burnham National School* (L. R. 17 Eq. 241; 43 L. J. Ch. 340; 29 L. T., N. S., 495), it appeared that there were but two trustees for a national school. These trustees were unable for a considerable time to agree as to the management of the school, and differences had arisen between them as to the appointment of a master, the result of which had been the closing of the school. One of the trustees was a member of the school board for the parish, and he proposed that the school should be transferred to the school board, and the school board passed a resolution applying to the trustees to make such transfer. The second trustee objected. The Charity Commissioners were then petitioned to appoint three new additional trustees, with the view, as was alleged, of securing a majority of at least two-thirds of the trustees who would transfer the school to the school board. The memorial to the Commissioners was signed by five of the members of the school board as well as others, but the intended transfer was not mentioned in the memorial, and an order was made by the Commissioners accordingly. A meeting of the trustees was afterwards convened, and a resolution for the transfer of the school was passed by a majority of four. The objecting trustee then petitioned for a discharge of the order. He alleged that the appointment of the three additional trustees would bring about a transfer of the school to the school board, and that the effect of it would be to destroy the Church of England character of the school and the trusts of the deed, as no distinctive religious teaching was allowed in a school

so transferred. The petitioner impugned the authority of the Commissioners to make the order without the consent of the bishop, and also on the ground that the new trustees, one of whom was the chairman of the school board, before being appointed, were pledged to join in transferring the school to the school board, which object was that for which the Commissioners had made the order. The Master of the Rolls (Sir G. Jessel) held that the power of the Charity Commissioners to make the order was clearly established. As to the objection to the order that even if the Commissioners had the power to appoint additional trustees generally, yet that it should not be exercised in a case where the appointment of such trustees of a Church of England school might have the effect of handing it over to a school board, he said: "I can conceive cases in which the Commissioners might be very careful in exercising their undoubted jurisdiction, but that is no reason for saying that any legislation with respect to such schools has taken away that jurisdiction. In fact a statutory provision has anticipated the objection by requiring a majority of two-thirds of the trustees to effect such a transfer. The only other objection upon public grounds is that the exercise of the power to appoint these trustees interferes with the provision contained in the 46th section of the Act of 1853. That section might in the case of a church school prevent the Court from appointing any trustee who was not a member of the Church of England. This is undoubtedly a Church of England charity, and if the objection had any foundation in fact it would certainly have been fatal to the appointment. The three gentlemen mentioned in the order are now ascertained to be all Churchmen, although at first it was thought not to be the case. The objections do not warrant me in interfering with the order of the Commissioners." The petition was accordingly dismissed with costs.

In the instructions of the Education Department as to transfers it is stated that if there is any trustee of the school who is not also a manager (whose address is known), the proposed terms of arrangement should be shown to him, and his observations thereon communicated to the Department.

(3) The Education Department in the instructions stated:—If there are any societies (such as the British and Foreign School Society, the National Society, the Wesleyan Education Committee, the Roman Catholic Poor School Committee, or any local educational body) who have contributed to the establishment of the school, the proposed terms of the arrangement should be shown to them, and their observations thereon communicated by the clerk of the school board to the Department. The view which the board and the managers take of these objections should also be communicated to the Department, who should be informed what practical reasons prevent the board and the managers from agreeing to meet any objections made by the society to the arrangement, on the ground that it involves an unnecessary departure from the terms of the original trust.

In the case of *The National Society v. The London School Board* (L. R. 18 Eq. 608; 44 L. J. Ch. 229; 31 L. T., N. S., 22), it appeared that the National Society made a grant of 220*l.* in the year 1867 towards the establishment of a Church of England school, and a trust deed for the management of the school was executed, providing that the school should "always be in unison with and conducted according to the principles and in furtherance of the ends and designs of the National Society." The deed contained no power of disposing of the

school site by way of alienation. At a meeting of the managing committee of the school in May, 1872, a resolution was passed that the school should be transferred to the London School Board under the provisions of this section, and it was transferred accordingly. The deed of transfer contained certain stipulations for providing religious instruction to the children at stated hours during at least two days in the week. The National Society, prior to the transfer, appeared before the Education Department under the provisions of the Act, and objected to the transfer, but their objections were overruled by the Department, who gave their sanction to the arrangement. The society thereupon filed a bill for the purpose of obtaining a declaration that the provisions of the trust deed of the 25th of February, 1867, ought to be observed in the management of the school established thereunder, and that no departure from the principles of education according to which such school was established could properly be effected without the sanction of the society. Also, that the transfer of the school to the school board was illegal. For the National Society it was argued that a transfer of the school could not be made without the consent of the society, who had advanced their money on the faith of the school being carried on in accordance with the principles of the Church of England, and that even if a transfer could be effected without such consent, it could only be effected subject to the trusts declared by the trust deed. Vice-Chancellor Malins, in delivering judgment, said :—What were the circumstances under which a transfer of a school to a school board might be made? First, there was the general power given to the managers of the school to make the transfer. Then the 23rd section of the Act required the consent of the Education Department to the transfer, and also of the majority of the annual subscribers to the school. Down to this point all the provisions of the Act had been complied with in the present case. Was it necessary to obtain any other consent? The following proviso in the section was relied on by the plaintiffs :—“ Provided that where there is any instrument declaring the trusts of the school, and such instrument contains any provision for the alienation of the school by any persons or in any manner or subject to any consent, any arrangement under this section shall be made by the persons in the manner and with the consent so provided.” It was said that under that proviso the consent of the National Society was necessary. The answer to that was that although there was a deed stating the trusts upon which the school was to be held, it contained no provision for alienation, and therefore the proviso was clearly inapplicable to the present case, and no further consent was required for transfer to the school board than had already been given. It was argued with great force that the managers were so inseparably connected with the National Society, the society being the principal supporters of the school, that it was most extraordinary to suppose that the Act intended to give the managers power to transfer the school without the society having a voice in the matter. But the society had a voice in the matter : they had a *locus standi* before the Education Department. In the present case they were heard, and the decision of the Department was final on the subject. The section seemed framed so as to have regard to the vested interests of all persons, for one of its provisions was, that “ where any person has a right given him by the trusts of the school to use the school for any particular purpose independently of such managers, nothing in this section shall authorize any interference with such right, except with the consent of such person.” This was an instance in which vested interests were

protected by the Act, and he could not come to any other conclusion than that the Act did not give the National Society a veto on these transfers. There was one other point. The school having been transferred to the school board, under whom religious instruction in any particular doctrines was excluded, the deed of transfer provided that on at least two days in the week the children might be instructed in the principles on which the school was established—namely, in the principles of the Church of England. Therefore, on the whole case, he was of opinion that the bill could not be sustained.

(4) As to the terms of an arrangement which might be made under this section with a school board, the Education Department in their instructions as to transfers of schools stated as follows :—

- “(a) The arrangement may be for a term of years, or for the entire interest which can be transferred under sec. 23. When the intended transfer is for a term of years or for a period determinable by a notice to the school board, the board should consider how they may be recouped the expense of any permanent alteration or enlargement of the premises which may be effected by them during their holding.
- “(b) The arrangement should show clearly what premises are transferred, and that such premises are subject to the trusts which affect the school premises.
- “(c) The board must not undertake to pay any consideration other than a strictly nominal one (say five shillings), whether such consideration consists of a price or of a rent.
- “(d) The arrangement may provide for the discharge of any *bond fide* incumbrance which is secured by a charge on the school premises, provided the amount of such incumbrance does not exceed the value of the interest in the premises and endowment transferred to the board.
- “(e) The arrangement may provide for the board keeping down the interest on any such incumbrance as that specified in paragraph (d), provided the annual amount of such interest does not exceed the annual value of the interest in the premises and endowment transferred to the board.
- “(f) The arrangement must not provide for the payment by the board of any other debt, or for the keeping down by the board of the interest on any other debt.
- “(g) The arrangement must not provide for the payment by the board of the current expense of maintaining the school during any time prior to the date of the transfer, and this date must not be earlier than the date of the consent of the Education Department to the terms of arrangement for transfer.
- “(h) The board may undertake to pay their proper share of such outgoings as rates, taxes, ground rent, insurance, repairs, heating, lighting, and cleaning.
- “(i) Where it is found more convenient for any reason that the trustees or managers should by the arrangement undertake in the first instance to pay for the whole of any such outgoings as are mentioned in paragraph (h), the following clause may be introduced into the arrangement. ‘Provided always that the board shall pay in respect of their share of [the outgoings in question] such reasonable sum, not exceeding £ per annum, as shall be actually expended by the trustees or managers thereon.’ The board must not undertake to pay a

fixed lump sum per annum, in consideration of the trustees or managers paying for the whole of, or any of, the aforesaid outgoings.

- “(l) If the fittings, furniture, books, and apparatus of the school are private property, they should be dealt with by a distinct agreement outside of any arrangement submitted to the Education Department under sec 23. If, however, these articles can only be dealt with by an arrangement under that section, there must be no valuable consideration given for them or for their use by the board.
- “(m) The arrangement may provide for the trustees or managers reserving to themselves the use of the school premises during Sundays, and during other times, provided a sufficient use is transferred to the board to enable the board to carry on upon the premises a public elementary school.
- “(n) If the use of any teacher's residence is transferred to the board at all, such residence should be excepted from any reservations in favour of the trustees or managers.
- “(o) The use to which the trustees or managers think they may legally put the school premises during any reserved times must not be specified in the arrangement for transfer, as the Education Department do not think they should be called upon to express any opinion upon that point.
- “(p) The arrangement must not prescribe the kind of instruction (whether religious or secular) to be given in the school. It must not contain anything as to the examination or inspection of the school, the appointment of managers or teachers, the admission of children, or the general management of the school. The school, so far as transferred to the board, must be managed in every respect as the board for the time being see fit, subject only to secs. 7 and 14 of the Elementary Education Act, 1870.
- “(q) In cases in which a transfer of a school in receipt of annual grants takes place in the course of the school year the arrangement may provide for the managers receiving such proportion of the grant as corresponds to the number of months which have elapsed between the end of the last school year and the date of the transfer.”

With reference to the transfer of an endowment to a school board, see *The School Board for London v. Faulconer* (L. R. 8 Ch. Div. 571; 48 L. J. Ch. 41). In that case it appeared that by the terms of a scheme approved in 1862, for appropriation of the increased revenues of a charity estate originally applicable to the relief of the poor, it was provided that the sum of 90*l.* per annum should be paid by the trustees to the treasurer of a school association, in aid of the expenses of a school in Flint Street, Walworth, “or any other school that may be established in its stead,” provided that no sum should be paid to any school which became the property of any exclusive denomination or sect, and that if the school should at any time thereafter become “materially altered in discipline, number of children or other circumstances,” then the 90*l.* should “in the discretion of the trustees,” be applied for educational purposes among other schools of a similar character in the parish. In 1873 the Flint Street school was transferred by the managers to the school board, under the provisions of this section, the managers at the same time by deed assigning to the

school board the endowment, "so far as they lawfully could assign the same." The trustees of the charity estate refused to pay to the school board the amount of the endowment, and a declaration was claimed that the school board as transferees and managers of the school were entitled to receive out of the income of the charity the sum in question. The defendants submitted that the 90*l.* a year was not an endowment which the managers were enabled by the statute to transfer; that the school had ceased to be a local school, and was now one of the general schools of the metropolis, and that the 90*l.* a year was otherwise required for the benefit of the poor of the parish, and ought to be so applied. It was further contended that the payment to the school board would give to the poor inhabitants no greater advantage than they would have if no such payment were made; that the payment would go into the general funds of the board, that no diminution would be made in the school fees, and that no diminution to the parish would accrue except a small decrease in the general rates, their proportion of which would amount to about 27*s.* a year. For the plaintiffs it was proved that the character of the school since the transfer remained unaltered, except that girls were admitted as well as boys, that the numbers had somewhat increased, and that the efficiency of the school was improved. It was further stated that the endowment would not be allowed to go into the general funds of the school board, but would be applied for the benefit of the particular school. A declaration as claimed was ordered.

In *Gurney & Others v. West Ham School Board*, which came before Chitty, J., in March, 1891, it appeared that the testator bequeathed to the trustees for the time being of the British School for boys at S—, for the use of the school an annuity of £100, to be payable so long as not less than eighty boys were educated in the school, and so long as the school was "carried on under the system of the Holy Scriptures being well taught therein without the peculiarities of any particular sect of professing Christians, and without the teaching of the Catechism of the national religious establishment of England." Otherwise the annuity was to cease. There was a similar bequest to the trustees for the time being of the British School for Girls at S—, on like conditions. The schools referred to were, under this section, transferred to the school board of the district, and the arrangement included the transfer of the benefit of the annuities. The testator's trustees asked for a declaration that the annuities ceased to be payable under the will by reason of the schools having been transferred to the school board, and the consequent or possible change in the management of the schools in respect of religious instruction. From the evidence it appeared that the conditions as to the number of children attending the schools had been fulfilled, and that there had been no change in the nature of the religious instruction. It was held that the annuities were still payable, the conditions of the bequest not having been infringed.

In *The Llanbadarnfawr School Board v. the Official Trustees of Charitable Trusts* ([1901] 1 Q. B. 430; 70 L. J. K. B. (C. A.) 307; 49 W. R. 363), the managers of a national school had under this section demised to the school board for a term of sixty years all the interests of the managers or of any one who was a trustee for them in the school buildings subject to certain reservations and the income of all endowments of the school, to hold the school buildings and to receive the income of the endowments, paying therefor to the Vicar of Llanbadarnfawr for the time being as representative or trustee of the school board

a rent of £1 per annum. The agreement on which the lease was based received the assent of the Education Department. The school board until two years before the action received the income of the endowments amounting to £235. There was then a new vicar of the parish, and he declined to pay the income of the endowments to the school board, and transferred the endowments to the defendants, the Official Trustees of Charitable Trusts. The action in the case was by the school board to recover from the defendants the sums received by them as income of the endowments, and for an inquiry as to the trust funds. The Court of Appeal (A. L. Smith, M.R., and Collins and Romer, L.JJ.), held that the School Board were not entitled to bring the action without the consent of the Charity Commissioners under sec. 17 of the Administration of Charitable Trusts Act, 1853.

See also *Re Poplar and Blackwall Free School*, *post*, p. 300, as to application of the charity funds of a charity school transferred to a school board, and sec. 13 of 2 Edw. 7, c. 42, *ante*, as to endowments of schools.

With regard to loans to school boards on account of schools *transferred for a term of years*, the Committee of Council on Education, on the 13th August, 1875, resolved as follows :—

- “(1) That it is expedient to apply to arrangements for *transfer for a term of years* the principle laid down by section 24 of the Act of 1870, with respect to the repayment of loans in cases of *retransfer* under that section.
- “(2) That, with this view, the consent of the Education Department shall not be given to any arrangement for the transfer of school premises for a term of years, unless such arrangement provides that the board shall retain possession of the premises at the end of the term, until the then value of any works executed with the aid of a loan shall have been repaid to the school board :
- “(3) That the amount to be repaid in each such case shall be ascertained, and certified, by a surveyor selected jointly by the school board and the managers, to whom the school will revert when it ceases to be a school provided by the board. In the event of their disagreement, the surveyor shall be appointed by the Education Department, and his expenses defrayed by the school board and managers, in such proportions as the Department shall direct.”

In a case in which, having regard to this minute, the National Society urged, with respect to a transfer of a school to which the society had contributed, that a clause should be introduced into the deed of transfer providing that the school board should not execute any works in connection with the school with the aid of a loan without the written consent of the trustees under the trust deed of the school, the Education Department made the introduction of the clause suggested a condition of their consent being given to the transfer of the school to the school board.

With regard to the transfer of educational endowments to school boards, see the 36 & 37 Vict., c. 86, sec. 13, *post*.

(5) The Education Department, in a letter addressed to Her Majesty's inspectors of schools, and dated the 13th of January, 1874, stated with reference to this provision :—“During the time in which

a school board have the control over any premises, the school which they carry on in such premises is a school provided by the school board. 'No religious catechism or religious formulary which is distinctive of any particular denomination' can, therefore, be taught in that time, and no time-table should be approved under which the instruction given in the school so provided extends to catechisms or formularies forbidden by the Act. If, under the transfer, the trustees, or former managers, retain for any time the control of the premises, the purposes to which these premises are to be put during such time are not allowed to be stated in the arrangement for the transfer, as the Education Department have no jurisdiction in the matter. You will therefore, in the case of a school transferred to a school board, take care that the time-table is limited to the hours during which the board have control over the school premises, and that it does not refer either to any time during which the school premises are *not* under the control of the board, or to any instruction given during such time."

See also Second Schedule (13) to 2 Edw. 7, c. 42, *ante*.

Re-transfer of School by School Board to Managers.

24. Where any school, or any interest therein, has been transferred by the managers thereof to the school board of any school district in pursuance of this Act, the school board of such district may, by a resolution passed as hereinafter mentioned, and with the consent of the Education Department, re-transfer such school or such interest therein to a body of managers qualified to hold the same under the trusts of the school as they existed before such transfer to the school board, and upon such re-transfer may convey all the interest in the schoolhouse and in any endowment belonging to the school vested in the school board.

A resolution for the purpose of this section may be passed by a majority of not less than two-thirds of those members of the school board who are present at a meeting duly convened for the purpose, and vote on the question.

The Education Department shall not give their consent to any such re-transfer unless they are satisfied that any money expended upon such school out of a loan raised by the school board of such district has been or will on the completion of the re-transfer be repaid to the school board.

Every school so re-transferred shall cease to be a school provided by a school board, and shall be held upon the same trusts on which it was held before it was transferred to the school board.

As to definition of managers, see sec. 3.

The transfer of a public elementary school from a Local Education Authority to the managers is a transfer within the meaning of sec. 8 (3) of 2 Edw. 7, c. 42, *ante*, and that section and sec. 9 of that Act as to provision of new schools therefore apply.

If the school is so transferred it will cease to be a school provided by the Local Education Authority; and, if it is to be carried on as a public elementary school, the provisions of 2 Edw. 7, c. 42, sec. 7, will apply, notwithstanding the trusts of the school.

As to the provision that a resolution for the purpose of the section may be passed by a majority of not less than two-thirds of those members of the school board present at the meeting and voting on the question, it is presumed that the majority prescribed will refer to the members of the Local Education Authority present at a meeting of that Authority duly convened for the purpose, and voting on the question. The provision in 2 Edw. 7, c. 42, Third Schedule (3), is limited in its application.

As to school endowments, see sec. 13 of 2 Edw. 7, c. 42, *ante*.

(1) With reference to loans to school boards on account of schools transferred to them for a term of years, see minute of Education Department of 13th August, 1875 (p. 250).

MISCELLANEOUS POWERS OF SCHOOL BOARD.

Contribution to Industrial Schools.

29 & 30 Vict., c. 118.

27. A school board shall have the same powers of contributing money in the case of an industrial school as is given to a prison authority by sec. 12 of the Industrial Schools Act, 1866; and upon the election of a school board in a borough the council of that borough shall cease to have power to contribute under that section.

By the Industrial Schools Act, 1866 (29 & 30 Vict., c. 118), an industrial school is defined as "a school in which industrial training is provided, and in which children are lodged, clothed, and fed, as well as taught." It is requisite that the Secretary of State for the Home Department should certify that the school is fit for the reception of children under the Act referred to, in order to constitute it a "certified industrial school." The rules for the management and discipline of a certified industrial school are subject to his sanction, and no substantial addition or alteration is to be made to or in the buildings without his approval. If dissatisfied with the condition of the school he may withdraw his approval.

The Secretary of State, on the 16th of March, 1897, issued model Rules for the guidance of Managers of Industrial Schools in the

preparation of a code of Rules for their school, and copies may be obtained on application to the Reformatory and Industrial Schools Office, Great Scotland Yard, S.W.

The classes of children who may under the Industrial Schools Act, 1866 (29 & 30 Vict., c. 118), and the Industrial Schools Acts Amendment Act, 1880 (43 & 44 Vict., c. 15), be sent to certified industrial schools, are as follows:—

Any child apparently *under the age of fourteen years* who is brought before two justices in Petty Sessions and comes within any of the following descriptions:—(1) that is found begging or receiving alms (whether actually or under the pretext of selling or offering for sale anything), or being in any street or public place for the purpose of so begging or receiving alms; or (2) that is found wandering and not having any home or settled place of abode or proper guardianship or visible means of subsistence; or (3) that is found destitute, either being an orphan or having a surviving parent who is undergoing penal servitude or imprisonment; (4) that frequents the company of reputed thieves; (5) that is lodging, living, or residing with common or reputed prostitutes, or in a house resided in or frequented by prostitutes for the purpose of prostitution; or (6) that frequents the company of prostitutes.

Any child apparently *under the age of twelve years* who is charged before two justices with an offence punishable by imprisonment or a less punishment, but has not been convicted of felony, and who ought, in the opinion of the justices (regard being had to the age of the child and to the circumstances of the case), to be dealt with by sending him to an industrial school. But with regard to the words “convicted of felony” sec. 1 of the Youthful Offenders Act, 1901 (see Appendix, p. 518), provides that where a child or young person having been convicted of felony is discharged in accordance with sec. 16 of the Summary Jurisdiction Act, 1879, or the Probation of First Offenders Act, 1887, or otherwise, or is punished with whipping only, the conviction shall not be regarded as a conviction of felony for the purpose of sec. 15 of the Industrial Schools Act, 1866.

Any child apparently *under the age of fourteen years* whose parent or step-parent or guardian represents to two justices that he is unable to control him, and that he desires that the child should be sent to an industrial school; and

Any child apparently *under the age of fourteen years*, maintained in a workhouse or pauper school, whom the board of guardians or board of management of the pauper school represent to two justices to be refractory, or to be the child of parents either of whom has been convicted of a crime or offence punishable with penal servitude or imprisonment, and that it is desirable that he should be sent to a certified industrial school.

In every case it is necessary that the justices should be satisfied that it is expedient to deal with the child by sending him to a certified industrial school.

The term “two justices” in the Industrial Schools Act, 1866, is defined by sec. 4 of that Act as meaning two or more justices in Petty Sessions, or the Lord Mayor or an Alderman of the City of London or a police Stipendiary Magistrate or other justice having by law authority to act alone for any purpose with the powers of two justices. See also sec. 5 of the Youthful Offenders Act, 1901, in

Appendix, p. 520, as to the power of a Court of Assize or Quarter Sessions to commit a child to an industrial school.

The Prevention of Crime Act, 1871 (34 & 35 Vict., c. 112), by sec. 14, further provides that: Where any woman is convicted of crime, and a previous conviction of a crime is proved against her, any children of such woman under the age of fourteen years who may be under her care and control at the time of her conviction for the last of such crimes, and who have no visible means of subsistence, or are without proper guardianship, shall be deemed to be children to whom in Great Britain the provisions of the Industrial Schools Act, 1866, apply, and the court by whom such woman is convicted, or two justices, shall have the power of ordering such children to be sent to a certified industrial school.

See also the provisions in secs. 12, 13, and 16 of the 39 & 40 Vict., c. 79, *post*, as to the children who, under that Act, may be sent to certified industrial schools. Sec. 16 of that Act enacts that an Order in Council may provide that a child may be punished for an offence by being sent to a certified industrial in lieu of a certified reformatory school.

In *Hiscocks v. Feronson* (L. R. 10 Q. B. D. 360 ; 52 L. J. M. C. 42 ; 48 L. T., N. S., 225 ; 31 W. R. 656) it was held that a child who lives with and under the guardianship of her mother in "a house resided in by prostitutes" may be ordered to be sent to an industrial school under the 29 & 30 Vict., c. 118, sec. 4, although there is no evidence of any act of prostitution on the part of the mother.

In a case in which the justices were applied to to issue a summons requiring a child, apparently under the age of fourteen years, who was alleged to be lodging, living or residing with common or reputed prostitutes, and frequenting the company of prostitutes, to appear before the justices with the view to the child being sent to a certified industrial school, the justices refused to issue the summons on the ground that they had no jurisdiction in the case, as the child had not been brought before them. From the affidavits it appeared that efforts had been made to bring the child before the justices without success. It was held in the Queen's Bench Division that when, in consequence of persons keeping a child out of the way, or otherwise, there was a difficulty in bringing the child before the justices, the ordinary legal process should be followed and a summons issued (*R. v. Moore*, 52 J. P. 375).

Where a child apparently under the age of fourteen years was brought before justices upon a charge of larceny and the charge was dismissed, but evidence was given that the child frequented the company of reputed thieves, the justices were held to have jurisdiction to order the child to be sent to an industrial school under secs. 14 and 15 of the Industrial Schools Act, 1866 (29 & 30 Vict., c. 118), without a fresh summons upon a substantive charge under those sections, as the Act is not a penal but a benevolent and protective Act for the benefit of children (*R. v. Jennings*, [1896] 1 Q. B. 64 ; 65 L. J. M. C. 26 ; 73 L. T. 412 ; 44 W. R. 128).

Sec. 9 of the Prevention of Cruelty to Children Act, 1894, provides that when any child under the age of sixteen years is brought before a petty sessional court under circumstances authorizing the court to deal with the child under the Industrial Schools Act, the court, if it thinks fit, in lieu of ordering that the child shall be sent to an industrial

school, may make an order under the Prevention of Cruelty to Children Act for the committal of the child to the custody of a relative or person named by the court.

As to the payment, in the case of a child committed to a certified industrial school, of the expenses of and incidental to the conveyance of the child to and from the school and the sending of the child out on licence or bringing back the child on the expiration or revocation of the licence, see 63 & 64 Vict., c. 53, sec. 4, *post*.

Local Education Authorities under this section have the same powers of contributing money in the case of an industrial school as is given to a prison authority by sec. 12 of the Industrial Schools Act, 1866. The section referred to is as follows:—"In England a prison authority may from time to time *contribute* such sums of money, and on such conditions as they think fit, towards the alteration, enlargement, or rebuilding of a certified industrial school; or towards the support of the inmates of such a school; or towards the management of such a school; or towards the establishment or building of a school intended to be a certified industrial school; or towards the purchase of land required either for the use of an existing certified industrial school, or for the site of a school intended to be a certified industrial school; provided,—

"First.—That not less than two months' previous notice of the intention of the prison authority to take into consideration the making of such contribution, at a time and place to be mentioned in such notice, be given by advertisement in some one or more public newspaper or newspapers circulated within the district of the county or borough, and also in the manner in which notices relating to business to be transacted by the prison authority are usually given.

"Secondly.—That where the prison authority is the council of a borough, the order for the contribution be made at a special meeting of the council.

"Thirdly.—That where the contribution is for alteration, enlargement, rebuilding, establishment, or building of a school or intended school, or for purchase of land, the approval of the Secretary of State be previously given for that alteration, enlargement, rebuilding, establishment, building, or purchase."

As regards the first proviso in the section above quoted, it is to be observed that the 36 & 37 Vict., c. 86, sec. 14 (Elementary Education Act, 1873), *post*, provides that where the [Local Education Authority] exercise the power of a prison authority, not less than fourteen days', instead of not less than two months', previous notice shall be given of the intention of [that authority] to take into consideration the making of the contribution.

See also sec. 9 of the Youthful Offenders Act, 1901 (p. 522), which provides that when a local authority, acting in pursuance of the Acts relating to Industrial Schools or the Elementary Education Acts, 1870 to 1900, agrees to contribute a weekly payment towards the maintenance of any child in any Industrial school, the requirements of the first proviso to sec. 12 of the Industrial Schools Act, 1866, and of sec. 14 of the Elementary Education Act, 1873 (relating to previous notice of intention to contribute), shall not apply to such contribution.

The Reformatory and Industrial Schools Amendment Act, 1872

(35 & 36 Vict., c. 21), by sec. 7 extends the powers of a prison authority under sec. 12 of the Act of 1866, and after reciting that section enacts that "the said section shall extend to authorize the prison authority themselves to *undertake* anything towards which they are authorized by that section to *contribute*; and that the Industrial Schools Act, 1866, shall be construed as if in the said section, so far as it relates to England, the expressions 'contribute towards' and 'contribution' included respectively 'undertake' and 'undertaking'; and that the expenses of a prison authority in England incurred in pursuance of the section shall be defrayed accordingly."

Doubts having arisen whether the enactment referred to applied to school boards, it was provided by sec. 2 of the Elementary Education (Industrial Schools) Act, 1879 (42 & 43 Vict., c. 48), *post*, that "a school board shall have power themselves to undertake anything towards which they are authorized by the Industrial Schools Act, 1866, as applied by the Elementary Education Acts, 1870 and 1873, and the Elementary Education Act, 1876, or any of them, to contribute, subject nevertheless to the like consent as is required in the case of any such contribution."

With regard to the cessation of the powers of the Council of a borough as a prison authority in respect of contributing moneys in the case of an industrial school, the Reformatory and Industrial Schools Act, 1872 (35 & 36 Vict., c. 21), by sec. 8 provides as follows:—

"Whereas by sec. 27 of the Elementary Education Act, 1870, it is enacted that, upon the election of a school board in the borough, the council of that borough shall cease to have power to contribute under sec. 12 of the Industrial Schools Act, 1866: Be it enacted that the said enactment shall extend to all powers conferred on a prison authority by this part of this Act [*i.e.* the powers to undertake anything towards which they are authorized by sec. 12 of the Industrial Schools Act to contribute], and the date at which the power of a prison authority of a borough, who have during not less than six months before the election of a school board in such borough contributed to or maintained any industrial school, ceases in pursuance of the said enactment, shall be and be deemed always to have been the date at which the school board in the borough resolve, in the manner and with the approval (if any) provided by sec. 12 of the Industrial Schools Act, 1866, to contribute, in pursuance of that section, to the industrial school to which the prison authority have so contributed, or, as the case may be, resolve, under the provisions of and with the consent required by the Elementary Education Act, 1870, to maintain such industrial school; provided that any such industrial school which was so maintained by the prison authority may, notwithstanding any such resolution, continue to be maintained by the prison authority, unless they agree to transfer such school to the school board."

As to the powers of the Local Education Authority with regard to contributing to the ultimate disposal of a child who has been committed to a certified industrial school, see sec. 4 (2) of the Elementary Education Act, 1900 (63 & 64 Vict., c. 53), *post*. See also sec. 8 of Youthful Offenders Act, 1901, Appendix, p. 521.

The Reformatory and Industrial Schools Act, 1872 (35 & 36 Vict.,

c. 21), by sec. 9 also empowers a prison authority in England, subject to the provisions in sec. 8 (*ante*) of that Act, to contribute towards the ultimate disposal of any inmate of a certified industrial school established by such authority, and provides that the expenses incurred by a prison authority in England in pursuance of this enactment shall be deemed to be expenses incurred by such authority in carrying into effect the provisions of the Industrial Schools Act, 1866.

As regards the term "prison authority" in the Acts above referred to, it is to be observed that the term is defined by the Industrial Schools Act, 1866, as meaning the prison authority under the Prison Act, 1865. As to the transfer to County Councils of the administrative business of County Justices in Quarter Sessions, with reference to the establishment and maintenance of and the contribution to industrial schools, and of the powers, duties, and liabilities of Councils in boroughs with a population of less than 10,000 according to the census of 1881, under the Acts relating to Industrial Schools, see secs. 3 (7) and 38 (2 c) of the Local Government Act, 1888 (51 & 52 Vict., c. 41).

With respect to the power of a Local Education Authority to borrow for the purpose of contributing towards or undertaking the cost of the alteration, enlargement, or rebuilding but not of the furnishing of an industrial school, or the establishment or building but not of the furnishing of a school intended to be an industrial school, or the purchase of land required either for the use of an existing industrial school or for the site of a school intended to be an industrial school, see 42 & 43 Vict., c. 48, sec. 3, *post*.

As to the powers of a Local Education Authority to establish, build, and maintain certified industrial schools, see sec. 28.

Under the Education Act, 1876 (39 & 40 Vict., c. 79, sec. 16), *post*, a prison authority within the meaning of the Industrial Schools Act, 1866, and a Local Education Authority have respectively the same powers in relation to a *certified day industrial school* as they have in relation to a certified industrial school.

See sec. 4 of Youthful Offenders Act, 1901, Appendix, p. 519, as to the power of the Council of any county or borough or Local Education Authority to defray the whole or any part of the expenses of the maintenance of children and young persons in custody under that section.

Under sec. 36 an officer may be appointed by the Local Education Authority to take the necessary steps for having sent to a certified industrial school children liable to be so sent.

See also sec. 13 of the 39 & 40 Vict., c. 79, *post*, as to the duty of the Local Education Authority with regard to taking proceedings for sending children to industrial schools.

Establishment of Industrial School.

28. A school board may, with the consent of the Education Department, establish, build, and maintain a certified industrial school within the meaning of the Industrial

Schools Act, 1866, and shall for that purpose have the same powers as they have for the purpose of providing sufficient school accommodation for their district : Provided that the school board, so far as regards any such industrial school, shall be subject to the jurisdiction of one of Her Majesty's Principal Secretaries of State in the same manner as the managers of any other industrial school are subject ; and such school shall be subject to the provisions of the said Act, and not of this Act.

For definition of the term "certified industrial school," see sec. 27, *note*, and *note* to sec. 14 of the 39 & 40 Vict., c. 79, as to certified truant industrial schools.

The powers of a Local Education Authority with regard to providing school accommodation, which are applicable to the establishment and maintenance of industrial schools, are those set forth in secs. 18, 19, and 20. The Local Education Authority have the same powers in relation to a certified day industrial school as they have in relation to a certified industrial school (39 & 40 Vict., c. 79, sec. 16, *post*).

See also provisions in secs. 12, 13, 14, 16, and 17 of the 39 & 40 Vict., c. 79, secs. 2, 3, and 4 of the 42 & 43 Vict., c. 48, and sec. 4 of the 63 & 64 Vict., c. 53, *post*, with regard to certified industrial schools and certified day industrial schools.

By sec. 15 of the 39 & 40 Vict., c. 79, the consent of one of His Majesty's Secretaries of State, instead of that of the Board of Education, is necessary to empower a Local Education Authority to establish, build, or maintain a certified industrial school.

With regard to an objection that sec. 3 of the 42 & 43 Vict., c. 48, *post*, had the effect of taking away any power which a school board previously had to borrow for the purpose of defraying the cost of furnishing a certified industrial school, Sir Henry James as Attorney-General advised that in the case of an industrial school belonging to a school board (as distinguished from an industrial school belonging to other persons, towards the cost of which the school board contributed, or part of the cost of which they undertook to defray) the school board, with the consent of the Secretary of State, had under the Elementary Education Acts of 1873 (36 & 37 Vict., c. 86, sec. 10) and 1876 (39 & 40 Vict., c. 79, sec. 15), the same powers of borrowing for a term of years as they had in the case of an elementary school, and that these powers were not taken away by the 42 & 43 Vict., c. 48, sec. 3, which applied only to cases where a school board contributed to or undertook to provide for expenses of an industrial school not belonging to them.

Appointment of Officers.

35. A school board may appoint . . . necessary officers, including the teachers required for any school provided by such board, to hold office during the pleasure of the board, and may assign them such salaries or remuneration (if any) as they think fit, and may from time to time remove any of such officers. . . . (1)

Two or more school boards may arrange for the appointment of the same person to be an officer to both or all such boards.

Such officers shall perform such duties as may be assigned to them by the board or boards who appoint them.

(1) The Customs and Inland Revenue Act, 1875 (38 Vict., c. 23), repealed the provisions as to stamp duty on appointments, and consequently this duty is no longer payable by officers. The terms as regards salary and tenure of office may be set forth in the minute of appointment. When this is done an agreement under seal which involves payment of 10s. for stamp duty is unnecessary.

For definition of the term "teacher," see sec. 3. Sec. 14 requires that every school provided by a Local Education Authority shall be conducted as a public elementary school, and sub-sec. 4 of sec. 7 provides that a public elementary school shall be conducted in accordance with the conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant. These conditions cannot be fulfilled unless the requirements of the Day School Code are satisfied.

The teachers recognized by the Board of Education are (a) probationers; (b) pupil teachers; (c) provisional assistant teachers; (d) assistant teachers; (e) provisionally certificated teachers; (f) certificated teachers; (g) women approved by the inspector as additional teachers. Lay persons alone are recognized as teachers.

With regard to the superannuation of teachers, see the Elementary School Teachers' Superannuation Act, 1898 (61 & 62 Vict., c. 57), *post*. See also Second Schedule (19, (20) to 2 Edw. 7, c. 42, *ante*, as to superannuation allowances of officers.

Medical officers were appointed by the School Board for London and the school boards of some populous boroughs under the powers conferred by this section.

The officers who were appointed by school boards were to hold office during the pleasure of the board. The officers appointed by a Local Education Authority will hold office on the same terms.

In *Hayman v. Governors of Rugby School* (43 L. J. 834), with reference to the provision in the Public Schools Act, 1868, that the head masters of the schools to which that Act applied should hold office during the pleasure of the governing body, Malins, V.C., said: "It is in my opinion clear that the plaintiff and all the head masters of the schools to which the Act applies hold their offices at the pleasure merely of the new governing body, and are consequently liable to be dismissed without notice, and without any reason being assigned." See also *R. v. Governors of Darlington School* (6 Q. B. 682; 14 L. J. Q. B. 687); *Re Bedford Charity* (5 Sim. 578); *Dean v. Bennett* (L. R. 6 Ch. 489); and *Teather v. Poor Law Commissioners* (19 L. J. M. C. 70). In *R. v. Thomas* (8 A. & E. 185), with reference to the office of town clerk, the office being held during pleasure, it was held that a resolution passed on the 25th July, rescinding a resolution passed on the 20th July, appointing a person as town clerk, was a sufficient removal from office. In *Ex parte Richards* (47 L. J. Q. B. 499), as to the

office of clerk to a local board, which was held during the pleasure of the local board, a *quo warranto* was refused on the ground that if the writ could issue it would be an idle form. It might restore the late officer momentarily, but he might be turned out again.

It would appear that the fact that an office was held during the pleasure of the school board would not have precluded the board from agreeing that certain notice should be given before determining the appointment, except in the case of grave misconduct on the part of the officer, and the same will be the case when the office is held under a Local Education Authority.

By sec. 86, *post*, the provisions of sec. 17 of the School Sites Act, 1841, as to the tenure of office of the schoolmaster or schoolmistress extend to the case of any school provided by a Local Education Authority and of any master or mistress of such school in the same manner as if the Local Education Authority were trustees or managers of the school as mentioned in that Act. By sec. 17 of the Act referred to it is enacted that a schoolmaster or schoolmistress to be appointed to any school erected upon land conveyed under the powers of the Act shall "in default of any specific engagement hold his office at the discretion of the trustees of the school." As to the first-mentioned section, see cases referred to in notes on that section.

As regards the appointment and tenure of office of teachers in schools not provided by the Local Education Authority (Second Schedule (13) to 2 Edw. 7, c. 42, *ante*), see sec. 7 (1), (a), (c), (5), and (7) of that Act.

In *Kemp v. The School Board of Coddington and Flamstead* (L. G. C., April 1, 1893, p. 286), it appeared that the plaintiff on 24th August, 1891, was arrested on a charge of having assaulted a girl, and was committed for trial on 31st August. On 3rd September the school board determined that he should be requested to resign, but he refused to do so. On the 7th September the clerk to the school board wrote to him stating that the school board had dismissed him. The plaintiff then immediately issued his writ claiming an injunction to restrain the board from removing him. On 14th September he was tried and acquitted. It was not until 8th January, 1892, that he obtained another appointment. One of the conditions of the agreement entered into with him by the school board provided that the employment should be determinable by one month's notice. The action was to recover from the school board his full salary up to 8th January, 1892, amounting to 40*l*. Mr. Justice Wills held that the school board were at liberty to dismiss the plaintiff by giving him a month's notice; but as they did not give him this notice, the resolution dismissing him was inoperative, and he continued the headmaster of the school until 8th January, 1892, when he undertook another appointment. He was therefore entitled to judgment for the amount claimed, and the costs of the action, and also of the application for an injunction. The application for an injunction was not frivolous; the plaintiff was accused of an offence which there was much difficulty in disproving, and it was highly important to him that he should not go into the dock as having been dismissed by the school board from the office which he had held under them.

In *Re School Board of Castleford* (25 L. T., N. S., 459), the Court of Queen's Bench refused an application for a *quo warranto* against the clerk of the school board. The grounds on which the motion was

made were, that notice was not sent to every member of the school board prior to the appointment being made, and that a person who was not a member of the board voted in the election. The Lord Chief Justice (Cockburn) in delivering judgment said that the office of clerk was held at the pleasure of the school board, and that if the clerk was elected against the will of the majority, the majority had it in their power to displace him. Under these circumstances, even if the writ would lie, the Court could not allow so much expense to be incurred unnecessarily.

In a case in which a district auditor disallowed a portion of the amount paid by a school board to one of the officers of the board, on the ground that the salary was exorbitant and in excess of the value of the services performed by the officer, the Local Government Board on appeal reversed the decision of the auditor. The Board stated as follows:—"By section 35 of the 33 & 34 Vict., c. 75, it is provided that a school board may appoint a clerk and a treasurer and other necessary officers and may assign them such salaries or remuneration, if any, as they think fit. It seems to the Board that this enactment gives the school board an absolute discretion with respect to the appointment of officers, their tenure of office, their removal from office, and their salaries; and the Board consider, therefore, that the auditor cannot legally reduce by disallowance the amount of salary assigned to an officer which in his view may appear to be excessive."

The remuneration of the treasurer, if such an officer is appointed, may be either by salary or commission. In a case in which the district auditor disallowed in the account of the treasurer a sum charged as commission, on the ground that the only power in law of reimbursing or paying a treasurer was by salary, the Local Government Board, on an appeal, reversed the auditor's decision. If a sum were assigned to the treasurer nominally as salary, but in fact by way of payment in lieu of interest for advances made by him, the payment would seem to be illegal.

On an appeal against a disallowance by a district auditor of a gratuity to an officer, the Local Government Board, having regard to the case *Ex parte Mellish* (8 L. T., N. S., 47), in which the Court of Queen's Bench decided that gratuities cannot be granted out of a public rate, held that the payment of the gratuity by the school board was illegal.

With regard to the salaries of teachers in public elementary schools, it appears from the report of the Board of Education for 1901-2 that the average salary of a certificated master was 128*l.* 17*s.* 2*d.*, and of a school-mistress 86*l.* 11*s.* 10*d.* In addition to these emoluments, many of the teachers were provided with residences free of rent. These averages were calculated upon the whole of the certificated teachers whether principals or additional. Of the certificated masters (principal teachers), 2 were in receipt of salaries under 50*l.*; 2544, 50*l.* and less than 100*l.*; 5441, 100*l.* and less than 150*l.*; 2694, 150*l.* and less than 200*l.*; 1307, 200*l.* and less than 250*l.*; 567, 250*l.* and less than 300*l.*; 449, 300*l.* and under 400*l.*, 27, 400*l.* and under 500*l.*, and 6, 500*l.* and over. Of the certificated assistant masters, 12 were in receipt of salaries under 50*l.*; 5363, 50*l.* and less than 100*l.*; 4315, 100*l.* and less than 150*l.*; 1439, 150*l.* and less than 200*l.*; 16, 200*l.* and less than 250*l.*; and 1 over 400*l.* Of the certificated mistresses (principal teachers), 134 received salaries under 50*l.*; 10,855, 50*l.* and less than 100*l.*; 4359, 100*l.* and less than 150*l.*; 1049, 150*l.* and less than 200*l.*; 630, 200*l.*

and under 250*l.* ; 131, 250*l.* and under 300*l.* ; 11, 300*l.* and under 400*l.* Of the certificated mistresses (assistant), 1031 received salaries under 50*l.* ; 16,790, 50*l.* and less than 100*l.* ; 4397, 100*l.* and less than 150*l.* ; and 11, 150*l.* and less than 200*l.*

With regard to the mode of remunerating teachers the Board of Education in Revised Instructions (1901) state—

“Article 81 of the Code provides that the school must not be conducted for private profit. The practice that has been known to exist of giving the whole income, or a considerable part of it, to the head teacher, and allowing him to provide the staff and equipment required, is clearly forbidden. But now that the amount of the grant is mainly dependent on the attendance of the scholars, managers should consider whether it is wise to continue the custom of making the teachers' salaries vary with the grant. The reason, which was not very satisfactory, formerly alleged in favour of this custom, viz., that it acted as a stimulus to vigorous exertion, no longer exists. Teachers, like other persons in steady employment, ought to know what salary they can expect.”

With regard to the income tax payable by husband and wife when holding the offices of schoolmaster and schoolmistress, it may be observed that the income of a married woman living with her husband is deemed to be his income, and he is responsible for rendering a statement of any profits belonging to her, and chargeable with income tax. But if the total joint income of a husband and wife does not exceed 500*l.*, and the commissioners of taxes are satisfied that such total joint income includes profits of the wife from any profession, trade, employment, or vocation, chargeable under Schedule D, or from any office or employment of profit chargeable under Schedule E, carried on or exercised by means of her own personal labour, and that the rest of the total joint income or any part thereof arises from profits acquired by means of the husband's own personal labour, and unconnected with the business of the wife, a separate claim of exemption or abatement may be allowed in respect of such profits of the wife.

With respect to the income tax payable by a schoolmaster of a public elementary school, where his wife held the office of schoolmistress in the same school, the offices being held at a joint salary, the question was raised in *Bowers v. Harding* ([1891] Q. B. 560 ; 60 L. J. Q. B. 474 ; 64 L. T. 201), whether the schoolmaster was entitled to make a deduction, in estimating the amount of his income liable to income tax, of the wages paid to a servant who was employed to do the work of the house and the value of her board—the employment of the servant being necessary to enable the wife to attend to her school duties. The Court held that the deduction could not be allowed.

In connection with the question whether income-tax is chargeable on teachers' residences connected with voluntary schools, the Board of Inland Revenue, on the 28th June, 1902, stated as follows :—Elementary Schools fall within the exemption from income-tax provided in favour of public schools by Clause 2 of No. VI. of section 61 of 5 & 6 Vict., c. 35, and any teacher's residence forming part of the school buildings would be included in the exemption unless occupied by a teacher who paid rent for the same, or whose total income from all sources exceeded 160*l.* per annum. If the teacher paid a rent for the residence to the trustees of the school, the latter, as

being trustees for a charitable purpose, would be entitled to claim exemption from income-tax under Clause 4 of No. VI. (*idem*). When, however, the teacher occupies the residence rent free, and his total income exceeds 160*l.* per annum, neither he nor the trustees can claim relief from the income-tax charged in respect of the residence. The trustees cannot claim relief on the ground that the total income of the trust does not exceed 160*l.* per annum, inasmuch as the right to claim exemption from income-tax on the ground of smallness of income is restricted to individuals and to bodies politic and corporate, and the teacher cannot do so because it has been judicially decided that a person who occupies a residence rent free (unless he has the power of letting it) is not entitled to include the annual value of the residence as a part of his personal income for the purpose of claiming exemption or abatement of income-tax. There is no exemption in the Income-Tax Acts applicable to separate residences provided rent free for teachers of elementary schools and not belonging to the public buildings of the school. Such residences would fall under the general rule of Schedule A, and would be chargeable upon the annual value quite irrespective of the amount of the teacher's personal income, unless indeed he had the power of letting the residence, and of so converting his interest into money, in which event he would be entitled to include the annual value of the house as an item of his personal income for the purpose of claiming exemption or abatement of the tax in the usual course.

In *Beaumont v. Bowers* ([1900] 2 Q. B. 204 ; 69 L. J. Q. B. 600 ; 48 W. R. 557, 83 L. T. 126 ; 64 J. P. 552), the appellant was clerk to a board of guardians and to the assessment and school attendance committees of the union, and under sec. 12 of the Poor Law Officers' Superannuation Act, 1896, contributed annually for the purposes of that Act a sum of 15*l.* 10*s.*, which was deducted from his salary under that section. He claimed to deduct this sum from the amount on which he was assessed by virtue of the Income-Tax Act, 1842, and it was held by the Court (Ridley and Darling, JJ.) that the amount so contributed under the Poor Law Officers' Superannuation Act came within the words "duties or other sums payable or chargeable by virtue of any Act of Parliament," in sec. 146 of the Income-Tax Act, 1842, and that the appellant was therefore entitled to the deduction claimed. The same principle would appear to apply in the case of deductions from the salaries of teachers for superannuations under the 61 & 62 Vict., c. 57, *post*.

There were several disallowances by district auditors in the accounts of school boards of payments towards the expenses of candidates for appointments, and the Local Government Board obtained the opinion of the law officers of the Crown as to the legality of these charges. The Board, acting on that opinion, held that if the school board by advertisement notified that they would pay the expenses of persons offering themselves as candidates for offices to which the board had power to appoint, and an application was made on the faith of this notification, it would be lawful for the board to pay the expenses of the applicant ; but that when there had been no such notification, the expenses could not legally be paid by them. Where the board expressly requested the attendance of a particular candidate, they might agree with him to pay his expenses, and in that case the payment by the board would be a legal one.

The clerk of a school board, it was held, was not disqualified for

the office of guardian of the poor on the ground that his salary was paid out of the poor rate within the meaning of the 5 & 6 Vict., c. 57, sec. 14; *R. v. Dibben* (L. R. 15 Q. B. D. 382; 54 L. J. Q. B. 557).

The Public Bodies Corrupt Practices Act, 1889, imposes heavy penalties on any officer of a public body who corruptly solicits or receives for himself or for any other person any gift, loan, fee, reward, or advantage whatever as an inducement to or reward for or otherwise on account of any member, officer, or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the public body is concerned.

The officers of a Local Education Authority should carefully abstain from using the schools or the children in the schools for party purposes in connection with elections. They should not allow the schools to be used for canvassing or distribution of bills, and in particular the children in attendance should not be employed by them in such elections, and no influence whatever should be brought by them to bear upon the children with reference to such elections.

With respect to the transfer of officers to the Local Education Authority and compensation for loss of office or emoluments, see Second Schedule (16) to (21) to 2 Edw. 7, c. 42, *ante*.

Officer to enforce Attendance at School.

36. Every school board may, if they think fit, appoint an officer or officers to enforce any bye-laws under this Act with reference to the attendance of children at school, and to bring children who are liable under the Industrial Schools Act, 1866, to be sent to a certified industrial school before two justices in order to their being so sent, and any expenses incurred under this section may be paid out of the school fund.

As to bye-laws with reference to attendance at schools, see sec. 74.

With regard to the direction necessary to authorize the officer appointed to enforce bye-laws to commence legal proceedings in a court of summary jurisdiction, for non-attendance or irregular attendance at school, see 39 & 40 Vict., c. 79, sec. 38, *post*.

With regard to the children who are liable under the Industrial Schools Act to be brought before justices with a view to their being sent to a certified industrial school, see note on sec. 27. See also secs. 12, 13, 14, 16, and 17 of the 39 & 40 Vict., c. 79, and secs. 2, 3, and 4 of the 42 & 43 Vict., c. 48, *post*, as to certified industrial schools, certified truant industrial schools, and certified day industrial schools.

In *R. v. Moore* (L. G. C. (1888) 987; 52 J. P. 375), the question was raised as to the means by which a child who is liable to be sent to a certified industrial school can be brought before the justices in order to his being so sent. The justices in this case had refused to

issue a summons for the appearance of the child, on the ground that they had no jurisdiction, but suggested that if the child were brought before them they would be prepared to deal with the case. The affidavits showed that efforts had been made to take the child before the justices without success. It was held by the Court that if there was any difficulty in bringing the child before the justices, either by reason of its resisting or of other persons keeping it out of the way, the ordinary process should be followed and a summons issued. The statute says, "any person may bring before any two justices." That must mean "any person may bring" according to law "before two justices," and "according to law" must mean by summons. The justices clearly have jurisdiction to issue a summons for the purpose.

As to the payments, in the case of a child committed to a certified Industrial School, of the expenses of and incidental to the conveyance of the child to and from the school, and the sending of the child out on licence or bringing back the child on the expiration or revocation of a licence, see 63 & 64 Vict., c. 53, *post*.

As to the school fund, see 2 Edw. 7, c. 42. Third Schedule (2), *ante*.

Combination of School Boards.

52. The school boards of any two or more school districts, with the sanction of the Education Department, may combine together for any purpose relating to elementary schools in such districts, and in particular may combine for the purpose of providing, maintaining, and keeping efficient schools common to such districts. Such agreements may provide for the appointment of a joint body of managers, . . . and for the proportion of the contributions to be paid by each school district, and any other matters which, in the opinion of the Education Department, are necessary for carrying out such agreement, and the expenses of such joint body of managers shall be paid in the proportions specified in the agreement by each of the school boards out of their school fund.

Under this section there may be combinations of Local Education Authorities with respect to schools provided by such authorities which are common to the areas for which those authorities act.

The term "school fund" is to be construed as referring to the fund out of which the expenses of the Local Education Authority are payable. Third Schedule (2) to 2 Edw. 7, c. 42, *ante*.

In the case of *The Gellygaer School Board v. The Llangynidr School Board*, 12 T. L. R. 407, it appeared that the two school boards in August, 1879, entered into an agreement for combination under sec. 52 with the sanction of the Education Department. It was thereby agreed that the two boards should be combined for the purpose of providing, maintaining, and keeping efficient certain

school accommodation, viz., To accommodate at the Newtown school in the Gellygaer district the infants under seven years of age from Llechrydd district in the parish of Llangynidr. The school accommodation was to be deemed to be provided by the school board of Gellygaer, but to be common to the districts of the two school boards. The expenditure in connection with the school was to be borne by the school fund of the school board of Gellygaer, and the school board of Llangynidr were to pay such a proportion of the expenditure defrayed out of rates, as the average attendance of children from Llangynidr should bear to the total average attendance of children at the Newton school for the school year. Clause 7 of the agreement was as follows:—If at any time one of the said school boards shall serve upon the other of the said school boards a notice in writing expressing a desire to dissolve this combination, then at such time not less than six months after the service of such notice as may be specified in such notice in that behalf, or if no such time is specified at such time after the service of such notice as may be determined by the Education Department, this combination shall be dissolved, subject, nevertheless, to such terms as may be approved by the Education Department, and each of the said school boards shall thereupon pay to such person and in such manner as may be appointed by the said Department so much money as the said Department may adjudge to be reasonably due on the adjustment of the accounts and property of the said school boards. In October, 1889, the defendants gave to the plaintiffs a notice in writing “that it is their intention to dissolve the existing combination agreement between the respective boards, dated August 8, 1879, at the expiration of six months from the receipt hereof.” After this notice down to the commencement of the action in this case in September, 1895, both infants and elder children from the Llechrydd district continued to attend the Newtown school, but the defendants refused to make to the plaintiffs any payment for the education of these children. This action was brought to compel payment. The plaintiffs alleged that the agreement for combination was still in force, and that the notice of dissolution was invalid because the Education Department had not approved of any terms subject to which the agreement should be dissolved, and they claimed a declaration that the agreement was effective and binding, notwithstanding the notice of dissolution, and payment by the defendants of 173*l.*, the aggregate of the sums alleged to be payable under the agreement. The defendants contended that the dissolution was valid. Mr. Justice North held that on the construction of Clause 7 of the agreement the terms which were to be approved by the Education Department did not extend to an alteration of the date of the dissolution. The dissolution therefore took effect as from April 18, 1890.

RETURNS AND INQUIRY.

Returns by Local Authority.

67. On or before the first day of January, one thousand eight hundred and seventy-one . . . every local authority hereinafter mentioned, and subsequently any such local

authority whenever required by the Education Department, but not oftener than once in every year, shall send to the Education Department a return containing such particulars with respect to the elementary schools and children requiring elementary education in their district as the Education Department may from time to time require.

As to the "local authority" for furnishing returns, see sec. 69.

See also sec. 95, and the 62 & 63 Vict., c. 32, sec. 13, *post*, as to the duty of Local Education Authorities to make such returns, and give such information as the Board of Education may from time to time require, sec. 70 as to proceedings on default of the local authority, and sec. 72 as to the refusal or neglect of managers or teachers to fill up the forms required for returns.

Mode of obtaining Returns.

68. For the purpose of obtaining such returns the Education Department shall draw up forms, and supply to the local authority such number of forms as may be required; and the managers or principal teacher of every school required to be included in any such return shall fill up the form, and return the same to the local authority within the time specified in that behalf in the form.

As to the "local authority" for the purpose of furnishing returns, see sec. 69.

Local Authority to make Returns.

69. The returns shall be made . . . by the school board. . . .

The local authority may, with the sanction of the Education Department, employ persons to assist in making such returns, and may pay those persons such remuneration as the Treasury may sanction. That remuneration, and all such other reasonable expenses incurred by the local authority in making such returns as the Treasury may sanction, shall be paid by the Education Department.

The duty of making these returns will devolve on the Local Education Authority as the successors of the school board.

See sec. 70 as to proceedings on default of authority to make returns required.

The Treasury only sanctioned the payment of expenses under this section in those cases in which the persons employed to assist in making the returns were so employed with the express sanction of the Education Department.

Proceedings on Default of Authority to make Returns.

70. If any local authority fail to make the returns required under this Act, the Education Department may appoint any person or persons to make such returns, and the person or persons so appointed shall for that purpose have the same powers and authorities as the local authority.

The "local authority" for furnishing returns is the Local Education Authority : see preceding section.

The 36 & 37 Vict., c. 86, by sec. 19, *post*, further provides that where the Board of Education have power to require the local authority to send to them a return, they may, without requiring a return from the local authority, appoint a person or persons to make the return.

Inquiry by Inspectors of Education Department.

71. The Education Department may appoint any persons to act as inspectors of returns, who shall proceed to inquire into the accuracy and completeness of any one or more returns made in pursuance of this Act, and into the efficiency and suitability of any school mentioned in any such return, or which ought to have been mentioned therein, and to inspect and examine the scholars in every such school. Where there is no return the inspector shall proceed as if there had been a defective return.

See also the provision in sec. 19 of the 36 & 37 Vict., c. 86, *post*.

Refusal to fill up Forms and to admit Inspectors.

72. If the managers or teacher of any school refuse or neglect to fill up the form required for the said return, or refuse to allow the inspector to inspect the schoolhouse or examine any scholar, or examine the school books and registers, or make copies or extracts therefrom, such school shall not be taken into consideration among the schools giving efficient elementary education to the district.

For definition of the term "managers," see sec. 3.

PUBLIC INQUIRY.

73. Where a public inquiry is held in pursuance of the provisions of this Act, the following provisions shall have effect : (1)

- (1.) The Education Department shall appoint some person who shall proceed to hold the inquiry :

- (2.) The person so appointed shall for that purpose hold a sitting or sittings in some convenient place in the neighbourhood . . . to which the subject of inquiry relates, and thereat shall hear, receive and examine any evidence and information offered, and hear and inquire into any objections or representations made respecting the subject of the inquiry, with power from time to time to adjourn any sitting.

Notice shall be published in such manner as the Education Department direct of every such sitting (except an adjourned sitting) seven days at least before the holding thereof:

- (3.) The person so appointed shall make a report in writing to the Education Department, setting forth the result of the inquiry, and stating his opinion on the subject thereof, and his reasons for such opinion, and the objections and representations, if any, made on the inquiry, and his opinion thereon; and the Education Department shall cause a copy of such report to be deposited with the school board . . . and notice of such deposit to be published. (2)
- (4.) The Education Department may make an order directing that the costs of the proceedings and inquiry shall be paid, according as they think just, either by the district as if they were expenses of a school board, or by the applicants for the inquiry; and such costs may be recovered, in the former case, as a debt due from the school board . . . and, in the case of the applicants, as a debt due jointly and severally from them; and the Education Department may, if they think fit, before ordering the inquiry to be held, require the applicants to give security for such expenses, and in case of their refusal may refuse to order the inquiry to be held.

(1) See sec. 20 as to inquiries with respect to proposals of Local Education Authorities to put in force the provisions of the Lands Clauses Acts, relating to the purchase and taking of land otherwise than by agreement.

The section applies also to any public inquiry which the Board of Education think fit to hold for the purpose of the exercise of any of their powers or the performance of any of their duties under the 2 Edw. 7, c. 42, *ante*. See sec. 23 (10) of that Act.

(2) As to the mode of publishing the notice of deposit, see sec. 20 of the 36 & 37 Vict., c. 86, *post*.

ATTENDANCE AT SCHOOL.

As to Attendance of Children at School.

74. Every school board may from time to time, with the approval of the Education Department, make bye-laws for all or any of the following purposes :—(1)

- (1.) Requiring the parents of children of such age, not less than five years nor more than [*thirteen years*], as may be fixed by the bye-laws, to cause such children (unless there is some reasonable excuse) to attend school : (2)
- (2.) Determining the time during which children are so to attend school ; provided that no such bye-laws shall prevent the withdrawal of any child from any religious observance or instruction in religious subjects, or shall require any child to attend school on any day exclusively set apart for religious observance by the religious body to which his parent belongs, or shall be contrary to anything contained in any Act for regulating the education of children employed in labour : (3)
- (3.) Providing for the remission . . . of the whole or any part of the fees of any child where the parent satisfies the school board that he is unable from poverty to pay the same : (4)
- (4.) Imposing penalties for the breach of any bye-laws : (5)
- (5.) Revoking or altering any bye-law previously made ;
 Provided that any bye-law under this section requiring a child between [*ten*] and [*thirteen*] years of age to attend school shall provide for the total or partial exemption of such child from the obligation to attend school if one of Her Majesty's inspectors certifies that such child has reached a standard of education specified in such bye-law. (6)
- (6) Any of the following reasons shall be a reasonable excuse (7) ; namely,

- (1.) That the child is under efficient instruction in some other manner ;
- (2.) That the child has been prevented from attending school by sickness or any unavoidable cause ;

- (3.) That there is no public elementary school open which the child can attend within such distance, not exceeding three miles, measured according to the nearest road, from the residence of such child, as the bye-laws may prescribe.

The school board, not less than one month before submitting any bye-law under this section for the approval of the Education Department, shall deposit a printed copy of the proposed bye-laws at their office for inspection by any ratepayer and supply a printed copy thereof gratis to any ratepayer, and shall publish a notice of such deposit. (8)

The Education Department before approving of any bye-laws shall be satisfied that such deposit has been made and notice published, and shall cause such inquiry to be made in the school district as they think requisite. (9)

Any proceeding to enforce any bye-law may be taken, and any penalty for the breach of any bye-law may be recovered, in a summary manner; but no penalty imposed for the breach of any bye-law shall exceed such amount as with the costs will amount to [*five shillings*] for each offence, and such bye-laws shall not come into operation until they have been sanctioned by Her Majesty in Council. (10)

It shall be lawful for Her Majesty, by Order in Council, to sanction the said bye-laws, and thereupon the same shall have effect as if they were enacted in this Act.

All bye-laws sanctioned by Her Majesty in Council under this section shall be set out in an appendix to the annual report of the Education Department. (11)

(1) Under this section it was optional with a school board whether or not they would make bye-laws as to the attendance of children at school. The law in this respect was altered by sec. 2 of the 43 & 44 Vict., c. 23, *post*, which rendered it the duty of a school board of a district in which bye-laws were not in force at the date of the passing of the Act (26th August, 1880) to make bye-laws under this section forthwith.

The powers of a school board as regards making bye-laws as to the attendance of children at school were by the 39 & 40 Vict., c. 79, extended to school attendance committees, whether appointed by guardians, town councils, or sanitary authorities, and from the "appointed day" the powers and duties of school boards and school attendance committees are vested in the Local Education Authority. The bye-laws in force on that day continue in force until revoked or altered by them under the powers conferred by this section.

Where the Local Education Authority are a County Council, the power of making bye-laws under this section includes a power of

making different bye-laws for different parts of the area of the Authority. See Third Schedule (4) to 2 Edw. 7, c. 42, *ante*.

The 43 & 44 Vict., c. 22, sec. 2, it will be observed, provided that if at any time after the 31st December, 1880, it appeared to the Education Department that in any school district there were no bye-laws in force, the Education Department might either proceed as if the school board or school attendance committee, as the case might be, had made default, or they might make bye-laws respecting the attendance of children at school in the district. Where bye-laws have been made by the Education Department under the Act referred to they have effect and are to be enforced and be subject to revocation or alteration as if they had been made by the school board or school attendance committee, and had been sanctioned in pursuance of this section. There is now no district without bye-laws.

The Board of Education issued a model form of bye-laws for adoption under this section by school boards and school attendance committees. The form is given in the Appendix : see p. 533.

(2) The bye-laws provided for by this section may apply to children of such age, not less than five years nor more than thirteen years, as may be fixed by the bye-laws. The 63 & 64 Vict., c. 53, *post*, however, enacts, by section 6, that fourteen years shall be substituted for thirteen years in this section, and consequently children between the ages of thirteen and fourteen years who previously were exempted may be brought within the operation of bye-laws.

In the case of children who are above the minimum age specified in the bye-law for exemption from attending school and are under the age of fourteen years, the provisions as to school attendance which apply are those of the Elementary Education Act, 1876 (39 & 40 Vict., c. 79, secs. 11 and 12, *post*).

Under the 62 & 63 Vict., c. 13, *post*, thirteen years may be fixed as the minimum age for total exemption from school attendance in the case of children to be employed in agriculture, subject to certain conditions as to partial exemptions. (See notes on that Act.)

There are exceptional provisions in the 56 & 57 Vict., c. 42, as to cases of blind and deaf children, and in the 62 & 63 Vict., c. 32, as to the cases of defective and epileptic children.

In order that the ages of children may be accurately ascertained for bye-law and other school purposes, the 39 & 40 Vict., c. 79, *post*, by secs. 25 and 26 provides for the obtaining of certificates and returns of the births of children.

As regards the term "parents," see the definition in sec. 3 of this Act. In *Hance v. Burnett* (45 J. P. 54), it appeared that the respondent was the mother of a child under thirteen years of age, and that after the child's birth she had married a mariner. A summons was taken out against her on the 6th of April, 1880, for not sending the child to school as required by the bye-laws. For some months previous to this date her husband had been at sea in the pursuit of his calling as a mariner. The magistrates considered that though the respondent had the actual custody of the child, yet being a married woman she could only be the agent or servant of her husband in respect of the custody and management of the child, and they dismissed the case. The Court held that the magistrates were wrong. The child was in the actual custody of the respondent, and she was therefore within the definition of the word "parent," and liable to see

to the child being sent to school. It was intimated also that it was immaterial whether the child was or was not the child of the husband. It would appear, therefore, that a mother having the actual custody of a child is liable to be proceeded against for a breach of the bye-laws in not sending her child to school during the absence of her husband. See also *School Board for London v. Jackson*, referred to in note to sec. 12 of the 39 & 40 Vict., c. 79, *post*, as to the liability of a parent in respect of a child who is staying temporarily with a relative in another place.

The bye-laws may require the parents of children "to cause such children to attend school" unless there is some reasonable excuse. As regards what is to be deemed a "reasonable excuse," see note 7 to this section. To "cause a child to attend school" means to "cause the child to receive the instruction provided in the school." A parent does not comply with the bye-law when he merely sends the child to the door of the school without the school fee, if he knows that without the fee the child will be refused admission. *Saunders v. Richardson* (L. R. 7 Q. B. D. 388; 50 L. J. M. C. 137; 45 L. T., N. S., 319; 29 W. R. 800). Neither does the parent cause the child to attend school within the meaning of the bye-laws if, when he is able to pay the school fee fixed by the school board and sanctioned by the Education Department, he sends the child to the board school without the fee, although the child may be admitted to the school and receive instruction therein. In *The London School Board v. Wood* (L. R. 15 Q. B. D. 415; 54 L. J. M. C. 145; 54 L. T. 88), where the circumstances were as stated, the magistrate held that the respondent, having sent his child to the school and the child having been in fact admitted into the school and received education therein, could not be convicted of wilfully omitting and neglecting to cause the child to attend school within the meaning of the bye-law. In the Queen's Bench Division, Lord Coleridge, C.J., and Grove, Denman, and Mathew, JJ., held that the magistrate was wrong, and that the respondent was liable to the penalty. Mathew, J., observed: "The object of the Act is to compel the parent to provide for the education of his child, and in my opinion he no more provided for her education by sending her to school without the fees than he would have provided for her support if he sent her to be maintained by charity."

Neither does the parent cause his child to attend school within the meaning of the bye-laws when he sends his child to a school where he is aware that admission will be refused. In *Jones v. Rowland* (63 J. P. 454), it appeared that the child of the appellant Jones had for some time prior to May, 1898, attended the St. Giles, Shrewsbury, voluntary school, which was a public elementary school. In May, 1898, admission to this school was refused by the managers. The appellant had due notice of the refusal to admit the child, and he was informed at various times subsequently that the child would be refused admission. He was also informed by the school board that the Education Department had approved of the refusal by the managers of the St. Giles school to admit the child, and that he must send his child to another school, and it was mentioned to him what were the schools of the Board within two miles of his residence that would receive the child. The appellant had notwithstanding, on more than one occasion, sent the child to the St. Giles school, admission being refused—and proceedings were then instituted against him by the school board for contravening the bye-laws by not causing his child to attend school. The justices were of opinion that the appellant

well knew that his child would not be received at the St. Giles' school, and that the mere offering of the child at that school was not an attendance within the meaning of the bye-laws, and they convicted the appellant. On a case stated it was held by the Queen's Bench Divisional Court (Darling and Channell, JJ.), that the justices were right, and the appeal was dismissed.

The attendance at school need not be at a public elementary school. The requirement is that the child shall attend school, and the word "school" in the bye-laws is usually defined as meaning a "certified efficient school." Moreover, it is a reasonable excuse if the child is under efficient instruction in some other manner.

(3) The bye-laws may determine the time during which the children are to attend school. The bye-laws usually provide that "the time during which every child shall attend school shall be the whole time for which the school selected shall be open for the instruction of children of similar age, including the day fixed by His Majesty's inspector for his annual visit." This is, however, subject to any provisions as to partial exemption from school attendance.

The detention at school after school hours of a child attending a board school for not doing home lessons is unlawful, and renders the master so detaining a child liable to be convicted for an assault : *Hunter v. Johnson* (L. R. 13 Q. B. D. 225 ; 53 L. J. M. C. 182 ; 32 W. R. 857).

With respect to the withdrawal of children from religious observances and instruction, and the attendance of children at school on a day expressly set apart for religious observance by the religious body to which the parent belongs, see secs. 7, 14, and 76. The character of the religious instruction to be given in schools is not one of the purposes for which bye-laws may be made, and the Board of Education have declined to sanction bye-laws on this subject.

The provision that the bye-laws shall not be contrary to anything contained in any Act for regulating the education of children employed in labour, has occasioned considerable difficulty. In the case of *Bury (App.) v. Cherryholme (Resp.)* (L. R. 1 Ex. D. 457), it was contended that by virtue of the bye-laws of the school board made under this section, the school board might, if they thought fit, compel children to attend school full time, notwithstanding they were working at a workshop, and attending school in conformity with the provisions of the Workshop Regulation Act, 1860 ; and the decision of the Court was in accordance with this view. A similar question was subsequently raised in *Mellor (App.) v. Denham (Resp.)* (L. R. 4 Q. B. D. 241 ; 48 L. J. M. C. 113 ; 40 L. T., N. S., 395 ; 27 W. R. 505). In that case the child, although not complying with the bye-laws, was regularly attending an efficient elementary school pursuant to the Factory and Workshop Act, 1878, and the Court held that the school board were not entitled to enforce their bye-laws against children between the ages of ten and thirteen years, who, although not obeying such bye-laws, were attending efficient elementary schools pursuant to and otherwise observing the conditions of the Factory and Workshop Act. In consequence of these conflicting decisions there was an appeal, in the case of *Mellor v. Denham*, to the Court of Appeal. The Court, however, held, that as the information which was laid in the case related to a criminal offence within the meaning of sec. 47 of the Supreme Court of Judicature Act, 1873, they had no

jurisdiction to hear the appeal: *Mellor v. Denham* (L. R. 5 (C. A.) Q. B. D. 467; 49 L. J. M. C. 89; 42 L. T., N. S., 493).

The Board of Education in their Report for 1901-2 state: "In manufacturing districts a threatened collision between the labour provisions of the Factory Act and those contained in the bye-laws has been averted by the adoption of an attendance qualification for exemption in the case of children over thirteen."

The Act of 43 & 44 Vict., c. 23, by sec. 4, as amended by sec. 6 of the 63 & 64 Vict., c. 53, provides that any person who takes into his employ a child under the age of fourteen years, before that child has obtained a certificate of having reached the standard of education fixed by a bye-law in force in the district for the total or partial exemption of children of the like age from attendance at school, shall be deemed to take such child into his employment in contravention of the Elementary Education Act, 1876, and shall be liable to a penalty accordingly.

This enactment will apply to children up to the age of fourteen years when the bye-laws are made applicable to children of that age, but only up to the age of thirteen years when this is the maximum age for children within the operation of the bye-laws.

This is subject to the exceptional provisions in the cases of blind and deaf children and defective and epileptic children, which are contained in the 56 & 57 Vict., c. 42, and 62 & 63 Vict., c. 32, *post*.

As to the provisions of the Factory and Workshop Act, 1901, and the Coal Mines Regulation Act as to the school attendance of children, see Appendix, pp. 500-511.

There are special provisions in the Canal Boats Acts, 1877 and 1884, with regard to the application of bye-laws in the case of children in canal boats. The provisions on this subject will be found in the Appendix, p. 512.

There are also provisions in the Prevention of Cruelty to Children Act, 1894, as to the employment of children. See Appendix, p. 515.

(4) See sec. 17 as to the powers of a Local Education Authority to remit fees when in their opinion the parents are unable from poverty to pay the same. See also the 54 & 55 Vict., c. 56, as to the admission of children to schools without requiring any fee, independently of any question as to the poverty of the parent.

(5) As to penalty for breach of bye-laws, see note 10.

(6) This proviso is to the effect that any bye-law requiring a child between ten and thirteen years of age to attend school shall provide for the total or partial exemption of such child from the obligation to attend school if one of His Majesty's Inspectors certifies that such child has reached a standard of education specified in the bye-laws.

The proviso was altered by the Elementary Education (School Attendance) Act, 1893 (56 & 57 Vict., c. 51, *post*), which provided as follows:—"The age at which a child may obtain total or partial exemption from the obligation to attend school, on obtaining a certificate as to the standard of examination which he has reached, shall be raised to eleven, and every such bye-law, so far as it provides for such exemption, shall be construed and have effect as if a reference to eleven years were substituted therein for a reference to a lower age,

and in sec. 74 of the Elementary Education Act, 1870, eleven shall be substituted for ten."

By 62 & 63 Vict., c. 13, sec. 1, it is provided that on and after the 1st of January, 1900, the Elementary Education (School Attendance) Act, 1893, shall have effect as if "twelve" were substituted therein for "eleven."

The effect of the two Acts above mentioned and of sec. 6 of the 63 & 64 Vict., c. 53, referred to in note 2 on this section, is that the proviso in this Act is to be read as if the words "between twelve and fourteen years of age" were substituted for the words "between ten and thirteen years of age." There are, however, certain exceptions. The Act, 62 & 63 Vict., c. 13, contains a provision applicable only to children to be employed in agriculture. It provides that the local authority for any district may by bye-law for any parish within their district fix thirteen years as the minimum age for exemption from school attendance in the case of children to be employed in agriculture, and that in such parish such children over *eleven* and under thirteen years of age who have passed the standard fixed for partial exemption from school attendance by the bye-laws of the local authority, shall not be required to attend school more than two hundred and fifty times in any year. The Act does not impose on a local authority any obligation to make such a bye-law, and, unless they do so, the enactment will be inoperative so far as regards their district.

The form of bye-laws in the Appendix, p. 533, gives a form which can be adopted when it is desired specially to provide, in accordance with this enactment, for the case of children to be employed in agriculture.

The last-mentioned Act contains a further proviso to the effect that a child shall be entitled to obtain partial exemption from school attendance on attaining the age of twelve years if such child has made three hundred attendances in not more than two schools during each year for five preceding years, whether consecutive or not. The form of bye-laws in the Appendix, p. 533, includes a clause for giving effect to this provision.

With regard to the enactments referred to, see notes on 63 & 64 Vict., c. 53, *post*.

The form of bye-laws issued by the Board of Education contemplated that a standard of education not lower than the fifth should be adopted for total exemption, and that for partial exemption, when a child is beneficially employed to the satisfaction of the local authority, the standard of education should not be lower than the fourth.

The code of 1902 provides that to "reach a standard" a child must be individually examined in reading, writing, and arithmetic in that or a higher standard, and must pass in each of those subjects.

The regulations of the Board of Education with regard to the granting of labour certificates in the case of children who are qualified for total or partial exemption under the bye-laws will be found in the Appendix, p. 551.

As to forgery of certificates, see sec. 25 of the 36 & 37 Vict., c. 86, *post*.

(7) The clause specifies certain reasons which are to be deemed a reasonable excuse for non-attendance at school.

In connection with the provision that when a child has been prevented from attending school by sickness it is a "reasonable excuse,"

see sec. 3 of 62 & 63 Vict., c. 32, under which the Local Education Authority may provide guides or conveyances for children who in the opinion of the Authority are, by reason of physical or mental defect, unable to attend school without guides or conveyances.

With regard to evidence as to sickness, the Local Government Board, in reply to an inquiry whether a school board were empowered to pay the cost of medical certificates as to the unfitness of children to attend school through illness, stated generally that they considered that the onus of supplying evidence of there being a reasonable excuse for the non-attendance of a child at school devolved upon the parent of the child, and if the parent obtained a medical certificate for this purpose it did not appear to the Board that the school board could legally undertake to bear the cost. If, however, through poverty or other causes the parent did not obtain a medical certificate, and it became necessary for the school board to determine whether proceedings should be instituted to enforce the child's attendance, the Board were of opinion that the cost of obtaining a certificate for the purpose of enabling the school board to arrive at a decision would be a legal charge on the rates.

The Local Government Board, in reply to an inquiry as to the duty of district poor law medical officers to furnish, free of charge, certificates as to the unfitness of children of poor parents to attend school, stated that where a medical officer is attending a person on the order of the guardians or of a relieving officer, it is his duty, under Article 205 (3) of the General Consolidated Order, to give a certificate under his hand in every case to the Guardians or the relieving officer, or the pauper on whom he is attending, of the sickness of such pauper, or other cause of his attendance, when required to do so, and that the Board were advised that under this article a parent might require a certificate of the sickness of his child when the child was attended by a district medical officer.

As regards the provision that it shall be a reasonable excuse if there is no public elementary school open that the child can attend within such distance not exceeding three miles measured according to the nearest road from the residence of the child as the bye-laws may prescribe, it will be seen from sec. 23 (1) of 2 Edw. 7, c. 42, *ante*, that the powers of a Local Education Authority include the provision of vehicles or the payment of reasonable travelling expenses for children attending school, whenever the Local Education Authority consider such provision or payment required by the circumstances of their district or of any part thereof. The exercise of this power will diminish the difficulty which arises, especially in the case of young children, when the public elementary schools are at a considerable distance from the homes of children.

In *Belper School Attendance Committee v. Bayley* (L. R. 9 Q. B. D. 259; 51 L. J. M. C. 91), the question was raised whether there can be a "reasonable excuse," other than one of those specified in the section, which will protect the parent in the case of the non-attendance of a child at school. In the case referred to it appeared that in proceedings before the justices a certificate under the hand of the principal teacher of the public elementary school was put in to show that from the 18th of May, 1881, to the 23rd of September, 1881, the child had made only 66 attendances out of a possible 158, but it was admitted that the certificate only showed that the child was not present at the

marking of the register, that is, between 9.15 and 9.30 a.m., and between 2 and 2.30 p.m., and that there was no record of the children who came late. For the defence it was proved that the child had invariably been sent from home at such an hour as would enable him to arrive at school at the proper time, and that on two occasions only had the parent been informed, previous to the commencement of the proceedings, that the child had arrived too late to be marked on the register as attending. On both occasions the mother had corrected the child for loitering on his way to school, and it was admitted that the school fees had been paid. On this evidence the justices dismissed the complaint, and the question for the opinion of the Court was whether the justices ought to have found that for the non-attendance of the child there was not a reasonable excuse. The Court affirmed the decision of the justices. Mr. Justice Grove said : Three reasons are stated in the Act as a "reasonable excuse." But these are not all. They do not exhaust the cases. Other reasons which would be a reasonable excuse would often arise. The reasons specified are given partly as illustrative and as the reasons which are most likely to occur. Here the child was sent by the parent every day to go to school at the usual time, and only on two occasions had the parent any reason to believe that the child had not reached school at the proper hour, and on those two occasions the child was punished for loitering. If the excuse in this case was not reasonable, a parent of a child between the ages of five and thirteen would be obliged to go to school with his child daily. If a parent were in a mere perfunctory manner to put the child outside the door to go to school, and were then to set up an assumption that the child attended school, the parent might be liable for the non-attendance of the child, but this was not the case here. Mr. Justice Lopes concurred.

In *London School Board v. Duggan* (L. R. 13 Q. B. D. 176 ; 53 L. J. M. C. 104 ; 32 W. R. 768), proceedings were instituted against the parent of a child for not causing his child to attend school in accordance with the requirements of the bye-laws. According to the evidence, the child was 12 years and 7 months old. She was working in the second standard, but could read fluently, write well, and had been fairly instructed in arithmetic and grammar. The child was the eldest of the respondent's family, consisting of several children, and had been employed as nursery maid in a respectable family, and had earned 3s. a week (which she gave to her mother) and her food. The father was a labourer at very small wages, and if the parents had been deprived of the additional money earned by the child in question it would have been impossible for them to have provided adequate food for their other children, and the health of some of the children would probably have been seriously injured. During the period the child was absent from school it was impossible for the parents to have earned more money than they did, and they had not spent money in drink or in other unnecessary ways. The officer of the school board stated that the child's parents were sober, hardworking, respectable people, influenced only by a desire for the benefit of all the children. The magistrate held that the circumstances constituted a "reasonable excuse" for non-attendance at school. The magistrate's decision was held to be right. Stephen, J. : The child has been earning money which must have formed a necessary and considerable part of the maintenance of the family. She had been discharging the honourable duty of helping her parents, and, for my own part, before I held that these facts did not afford a reasonable excuse for her non-attendance

at school, I should require to see the very plainest words to the contrary in the Act.

If the prepayment of fees is made a rule in a board school, and a child comes to a school without his fee, although the parent is not unable from poverty to pay the fee, the refusal of admission would not constitute a "reasonable excuse" within the meaning of this section for non-attendance. Neither is it a "reasonable excuse" when the parent sends his child to a school when he is aware that admission will be refused. See *Jones v. Rowland*, in note (2) on this section.

One of the conditions of a grant being made to a school is that "no child shall be refused admission as a scholar on other than reasonable grounds." As to grounds which have been considered reasonable for refusing admission to a child, see note to Art. 78 of the Code, p. 636.

(8) The mode of publishing notice of the deposit is prescribed by sec. 20 of the 36 & 37 Vict., c. 86, *post*. The following order of the Committee of the Privy Council on Education, which was made under the powers conferred by that section, bears date the 13th of August, 1875:—"Their Lordships, having read the 20th section of the Elementary Education Act, 1873, and having also read the order of the Education Department of the 30th December, 1873, made in pursuance of the said section, do hereby, in pursuance of the said section, order that—(1) From and after the date of the present order the aforesaid order of the 30th day of December, 1873, be revoked. (2) From and after the date of the present order, the notice of deposit of bye-laws under sec. 74 of the Elementary Education Act, 1870, shall be published only by advertisement in some one or more of the newspapers circulating in the district of the board whose bye-laws are so deposited. (3) All acts done and proceedings taken before the date of this order, shall, notwithstanding the revocation of the order of the 30th December, 1873, be valid."

If the Board of Education require alterations to be made in the bye-laws submitted to them, the altered bye-laws must be deposited for the inspection of the ratepayers for not less than one month, notwithstanding that the bye-laws originally proposed were so deposited. It is therefore found convenient to submit to the Board of Education a draft of the proposed bye-laws, prior to their being deposited, with the view of ascertaining whether the Board will be prepared to sanction them. When this is done, alterations can be made without the loss of a month.

(9) The Board of Education, before approving of bye-laws, require to be furnished with a declaration of the due deposit of the bye-laws and of publication of the notice, together with a copy of the newspaper containing the advertisement.

(10) Under this section the authority may make bye-laws as to school attendance, and *impose* penalties for the breach of such bye-laws,—but no penalty *imposed* for the breach of any bye-law shall exceed such amount as, with the costs, will amount to five shillings for each offence.

By sec. 6 (2) of the 63 & 64 Vict., c. 53, *post*, it is provided that the maximum penalty for the breach of a bye-law requiring the attendance

of a child at an elementary school shall be twenty shillings, and accordingly twenty shillings shall be substituted for five shillings in sec. 74 of the Elementary Education Act, 1870.

When the bye-laws have imposed a penalty for the breach of any bye-law, and the maximum penalty so imposed has been fixed at such amount as, with the costs, will amount to five shillings, it would appear to be necessary, if it is desired to provide for the higher penalty, that the bye-law should be altered by providing that the maximum penalty, inclusive of costs, shall be fixed at twenty shillings.

The sanction of His Majesty in Council will not now be necessary before bye-laws come into operation. The sanction of the Board of Education will be all that is required, as sec. 6 (3) of the 63 & 64 Vict., c. 53, provides that sec. 74 of the Elementary Education Act, 1870, shall have effect as if the sanction therein referred to were the sanction of the Board of Education instead of the sanction of His Majesty in Council.

When the penalty which the defendant is ordered to pay for breach of a bye-law does not amount to five shillings, sec. 8 of the 42 & 43 Vict., c. 49 (Summary Jurisdiction Act, 1879) applies. That section provides as follows :—

“Where a fine adjudged by a conviction by a Court of Summary Jurisdiction to be paid does not exceed five shillings, then, except so far as the Court may think fit to expressly order otherwise, an order shall not be made for payment by the defendant to the informant of any costs; and the Court shall, except so far as they think fit to expressly order otherwise, direct all fees payable or paid by the informant to be remitted or repaid to him. The Court may also order the fine, or any part thereof, to be paid to the informant in or towards the payment of his costs.”

With reference to evidence, and other matters in proceedings for recovery of penalties under bye-laws, see sec. 85 of this Act, secs. 23 and 24 of the 36 & 37 Vict., c. 86, and secs. 38 and 50 of the 39 & 40 Vict., c. 79, *post*. See also sec. 22 of the 36 & 37 Vict., c. 86, as to the powers of the Local Education Authority to obtain returns of the attendance of children at public elementary schools.

It will be observed from sec. 50 of the 39 & 40 Vict., c. 79, that where an offence is punishable under a bye-law and also under the Education Act of 1876, or any other statute, proceedings may be instituted in respect of the act, neglect, or default, either under the bye-law or the statute in the discretion of the authority or person instituting the proceedings; but proceedings under one enactment or bye-law only can be instituted in respect of the same act, neglect, or default. Any bye-law made before or after the 1st of January, 1877, when the Education Act, 1876, came into operation, if otherwise valid, is not invalid by reason of its being more stringent than the provisions of that Act. In *The London School Board v. Bridge (In re Murphy)*, and *Morgan v. Haycock* (see p. 321), *post*, it was held, notwithstanding this provision, that if on the part of a parent there was such habitual neglect to provide efficient elementary education for his child as to bring the case within sec. 11 of the 39 & 40 Vict., c. 79, *post*, the proper course was to proceed under that section, and that the local authority were not entitled to proceed against the parent for a breach of the bye-laws. This, however, is now met by the provision in sec. 4 of the 43 & 44 Vict., c. 23, *post*, that proceedings may, in the discretion of the local authority or person instituting the same, be taken for punishing the contravention of a bye-law, notwithstanding that the act,

or neglect, or default alleged constitutes habitual neglect to provide efficient elementary education for a child within the meaning of sec. 11 of the 39 & 40 Vict., c. 79. See note (1) on that section.

No legal proceedings for non-attendance or irregular attendance at school are to be commenced in a court of summary jurisdiction, by a person appointed to enforce the bye-laws, except under the directions referred to in sec. 38 of 39 & 40 Vict., c. 79, *post*.

With regard to the service of summonses, the Home Secretary, in a letter dated the 19th of November, 1883, stated that he had taken the opinion of the Law Officers of the Crown on the question as to the service of summonses by constables in cases under the Elementary Education Acts, and that he was advised by them "that school authorities have the right of insisting on the summonses being served by the police, and that if the summonses are served by the police the school authorities, as being the persons at whose instance the process is issued and served, are bound to pay the fees to constables according to the table settled by justices pursuant to statutory authority." It would not appear that there would be any objection to the service of the summonses by an officer of the Local Education Authority if the justices consent.

The Home Secretary in 1883 expressed the opinion that the law did not impose on the police the duty of collecting the penalties imposed on parents for neglecting to send their children to school, and stated that he was aware of no reason why it should be performed by them. It would appear, therefore, that where the police decline to collect the penalties referred to the only course open to the Local Education Authority is for them to call upon their officers to collect the penalties, where they are not at once paid on conviction.

The Secretary of State also stated that he was advised that when it was deemed expedient to enforce payment of a sum adjudged by a conviction, it devolved on the school board to apply to the Court for a distress warrant.

In *Cook v. Plaskett* (46 L. T., N. S., 383), which came before the Court before the passing of the 63 & 64 Vict., c. 53 (see sec. 6 of that Act), the question was raised whether the limitation of the amount of the penalty and costs to 5s. applied so as to include the costs of a distress warrant. In the case referred to, Plaskett was convicted of an offence under the bye-laws, and a penalty of 3s. with 2s. costs was imposed. The penalty and costs not being paid, the magistrate was applied to to issue a distress warrant against the goods of Plaskett for a sum of 8s., viz., 5s. being the amount of the penalty and costs above mentioned, and 3s. in respect of the costs of the warrant of distress. The magistrate considered that by the terms of the section he was precluded from issuing a distress warrant for more than 5s., and accordingly declined to do so, but the Court (Mr. Justice Grove and Baron Huddleston) held the contrary. Mr. Justice Grove said: The statute says that no penalty imposed for the breach of any bye-laws shall exceed such sum as with the costs will amount to 5s. Here the penalty was 3s. and the costs 2s. The costs of the distress have nothing to do with the matter.

In answer to an inquiry addressed to the Home Office, it was stated that though the Secretary of State had no authority to give a legal opinion in such a matter, he considered that for a member of a school

board to adjudicate on a school board summons was illegal, and, if it were legal, certainly inexpedient.

There are several decisions with reference to justices, who are members of a local authority, acting in matters in which the local authority are interested, to which it may be convenient to refer.

In *R. v. Millege and others, Justices of Weymouth* (L. R. 4 Q. B. D. 332; 48 L. J. M. C. 139; 40 L. T., N.S., 748; 27 W. R. 659), the proceedings were under the Public Health Act, 1875, which provides that no justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of any local authority. It appeared that three members of the town council, who were justices of the borough, sat on the bench at the hearing of a summons taken out under the Public Health Act, although they had been present at the meeting at which the directions to prosecute were given, and had been parties to the resolution on the subject. The order made by the justices was quashed on the ground that they were prosecutors, and could not therefore act as judges in the case. In the course of the argument, however, Cockburn, C.J., observed that if the justices had not taken part in determining the prosecution they would not have been disqualified.

In *R. v. Lee and others* (L. R. 9 Q. B. D. 394) also, where the sanitary committee of the town council, who were the local authority under the Public Health Act, 1875, passed a resolution directing the town clerk to institute a prosecution against S. for exposure for sale of meat unfit for human food, contrary to the provisions of that Act, and at the hearing of the information laid in pursuance of that resolution, S. was convicted before four justices, one of whom was a member of the sanitary committee, and had been present at the meeting at which the resolution was passed, it was held that a rule for a *certiorari* to bring up and quash the conviction must be made absolute. Field, J.: Sec. 258 of the Public Health Act has not the effect of enabling a person to act as prosecutor and judge in the same matter. It would require express terms in an Act of Parliament to produce that effect. I think that the meaning of sec. 258 is clear. It was thought that there might be inconvenience in carrying out the Act owing to the difficulty in boroughs of getting justices to sit who were not members of the corporation. The legislature, therefore, went one step in the direction of removing that difficulty by enacting that the mere fact of membership should not disqualify the justice. The section, therefore, removes one ground of interest merely. There is no warrant for holding that where a justice has acted as a member by directing a prosecution for an offence under the Act, he is a sufficiently disinterested person to be able to sit as a judge at the hearing of the information.

In *R. v. Gibbon and another, Justices of Lancashire* (L. R. 6 Q. B. D. 168; 29 W. R. 442), the proceedings were under a local Act, which provided that the corporation should be the authority for the execution of the Act, and that no person should be disqualified or disabled to act as a justice of the peace in any matter arising under the Act by reason of his being a member of the council or any committee thereof. In that case an information was laid by the borough surveyor before an alderman of the corporation, who was an *ex officio* justice. The defendant was summoned to appear at petty sessions. The justices present at the petty sessions when the defendant appeared were not members of the corporation, but ordinary justices of the county at large. For the defendant, objection was taken that the

information was invalid, as it had been laid before a member of the corporation, who was not entitled to receive it. This objection was upheld by the justices, who refused to proceed, although it was not alleged that the alderman before whom the information was laid had been present at any meeting of the town council at which the question of the proceedings had been considered. On a motion to make absolute a *mandamus* commanding the justices to hear the case, it was held by Manisty, J., that the justices were right in the course which they had adopted. The corporation being entitled to the penalty were the prosecutors, and the alderman before whom the information was laid must be taken to have acted as a judge in considering the case before granting the summons.

In a later case, *R. v. Hundsley* (L. R. 8 Q. B. D. 383; 51 L. J. M. C. 137; 30 W. R. 368), it was held, where a section in a local Act provided that "any person shall not be disqualified from acting as a justice in any matter arising under or in relation to the Act by reason of his being a ratepayer in the borough, or liable to any payments under the Act, or a member of the town council or any committee thereof," that it is not enough, in order to disqualify a justice from adjudicating on matters arising under the Act, to show that he is a member of the town council, and, as such, has a pecuniary interest in the result of the information or complaint, or that he is a member of the corporation charged with the duty of prosecuting the offence which he sits to adjudicate upon, but it must be established that he has such a substantial interest in the result as to make it likely that he has a real bias. In the case referred to, K., an officer of the corporation who was charged with the duty of collecting the borough rates, acting on his own discretion, and without consulting the town council or any committee or member thereof, obtained a summons for the non-payment of rates from a justice who was not a member of the town council. At the hearing of the summons, one of the sitting justices was a town councillor, and, on the ground that he was thereby disqualified from adjudicating upon the matter, the justices dismissed the summons. It was held that the justice was not disqualified, and that the summons must be heard and determined.

In *R. v. Justices of Huntingdon* (L. R. 4 Q. B. D. 522), where members of the town council had taken an active part in discussions at meetings of the council, as to the making of an order under the Dogs Act, 1871, and were parties to the making of the order, and subsequently convicted a person for an offence under the order, the conviction was supported. See also *R. v. Mayor and Justices of Deal, ex parte Curling* (45 L. T., N. S., 439; 30 W. R. 154). In that case A. had been convicted and fined for cruelty to a horse upon the prosecution of an officer of the Royal Society for the Prevention of Cruelty to Animals. Some of the justices who heard the summons and took part in the conviction were subscribers to a branch of that society, which received subscriptions in the country, and forwarded them to the society's office in London. All prosecutions by the society were directed by the secretary or committee in London, and no subscribers had any authority over, or responsibility for, such prosecutions, and the society never accepted any part of the penalties inflicted under the Cruelty to Animals Prevention Act, 1849, secs. 2, 18, 21. It was held upon a rule for *certiorari* that there was nothing in these facts to create a real bias in the minds of the justices which could amount to a disqualifying interest.

(11) When bye-laws in pursuance of this section have been sanctioned, it is, under sec. 23 of the 39 & 40 Vict., c. 79, the express duty of the Local Education Authority to enforce the bye-laws.

MISCELLANEOUS.

Application of Small Endowments.

75. Where any school or any endowment of a school was excepted from the Endowed Schools Act, 1869, on the ground that such school was at the commencement of that Act in receipt of an annual parliamentary grant, the governing body (as defined by that Act) of such school or endowment may frame and submit to the Education Department a scheme respecting such school or endowment. (1)

The Education Department may approve such scheme with or without any modifications, as they think fit.

The same powers may be exercised by means of such scheme as may be exercised by means of any scheme under the Endowed Schools Act, 1869; and such scheme, when approved by the Education Department, shall have effect as if it were a scheme made under that Act. (2)

A certificate of the Education Department that a school was at the commencement of the Endowed Schools Act, 1869, in receipt of an annual parliamentary grant shall be conclusive evidence of that fact for all purposes.

(1) The object of the Endowed Schools Act, 1869 (32 & 33 Vict., c. 56), was to authorize various changes in the government, management, and studies of endowed schools, and in the application of educational endowments, with the view to promoting their greater efficiency, and carrying into effect the main designs of the founders of the schools, by putting a liberal education within the reach of children of all classes. Every school which, at the date of the passing of that Act (August 2, 1869), was in receipt of a parliamentary grant, unless it was a "grammar school" as defined by 3 & 4 Vict., c. 77, was excepted from the operation of its provisions. The schools thus excepted are now provided for by this enactment.

The Endowed Schools Act, 1873 (36 & 37 Vict., c. 87), extends the operation of this section. By sec. 3 of that Act it is provided as follows:—

"Where an endowed school, not being a grammar school defined by the Act of the session of the 3 & 4 Vict., c. 77, or a department of such a grammar school, is at the commencement of this Act" (the 1st of September, 1873) "an elementary school within the meaning of the Elementary Education Act, 1870, and the gross average annual income of the aggregate educational endowments of such school

during the three years next before such commencement did not exceed one hundred pounds, in such case after the commencement of this Act . . . section seventy-five of the Elementary Education Act, 1870, shall apply to such school and the endowments thereof in like manner as if it were a school which, at the commencement of the principal Act, was in receipt of an annual parliamentary grant, and schemes may accordingly be framed, submitted, and approved under the said section with reference to such schools and endowments.

"Provided that nothing in this section shall prevent the commissioners from making, on the application of the governing body of an endowment of which part only is an educational endowment to which this section applies, a scheme dealing, in pursuance of the principal Act, with the part of such endowment applicable or applied to other charitable uses, and in such case the scheme may deal with the endowed school and endowment thereof in like manner as if this section had not been enacted.

"The governing body of every school to which this section applies may, if they think fit, charge such fees to the scholars as may from time to time be approved by the Committee of Council on Education, and shall permit the school to be inspected and the scholars therein to be examined by one of Her Majesty's Inspectors of Schools at such times and in such manner as the Committee of Council on Education may from time to time direct.

"The certificate of the Charity Commissioners for England and Wales that a school is or is not a school to which this section applies shall be conclusive evidence of the fact for the purposes of the principal Act and this section."

The "governing body," according to sec. 7 of the Endowed Schools Act, 1869, means "any body corporate, person or persons who have the right of holding, or any power of government of or management over any endowment, or, other than as master, over any endowed school, or have any power, other than as master, of appointing officers, teachers, exhibitioners, or others, either in any endowed school, or with emoluments out of any endowment."

It may be observed in connection with this section that the Army Schools Act, 1891 (54 Vict., c. 16), provides that where any scheme in force for the regulation of any endowed charity or charities, established or approved before or after the passing of that Act, includes any provision for the benefit of children who are or have been scholars in a public elementary school, an army school shall be deemed a public elementary school within the meaning of those provisions.

The expression "army school" means a school established for the purpose of affording education to children of non-commissioned officers and men of Her Majesty's regular land forces, and conducted under the authority of a Secretary of State or of the Admiralty; and a certificate of the Director-General of Military Education or of the Inspector of Naval Schools, as the case may require, is sufficient evidence that a school is an army school within the meaning of this Act.

See also sec. 2 (2) of the Board of Education Act, 1899 (62 & 63 Vict., c. 33, *post*), with respect to the exercise by the Board of Education of powers of the Charity Commissioners in matters which relate to education, subject to the provision that any question whether an

endowment, or part of an endowment, is held for or ought to be applied to educational purposes, shall be determined by the Charity Commissioners; and sec. 13 of 2 Edw. 7, c. 42, *ante*, as to further powers of the Board of Education with regard to endowments.

(2) Schemes under the Endowed Schools Act may provide, in such manner as may render any educational endowment most conducive to the advancement of the education of boys and girls, or either of them, for altering and adding to any existing and making new trusts, directions, and provisions in lieu of any existing trusts, directions, and provisions which affect the endowment and education promoted thereby, including the consolidation of two or more endowments, or the division of one endowment into two or more endowments.

In *Re St. Leonard, Shoreditch, Parochial Schools* (L. R. 10 App. Cas. 304; 54 L. J. P. C. 30; 51 L. T. 305; 33 W. R. 756), it was held by the Privy Council that where the Charity Commissioners by their scheme provided that certain endowments which had theretofore been applied in carrying on the schools of a particular parish should thenceforth be applied in exhibitions for the benefit of a larger area of schools, this was within their power under sec. 9 of the Endowed Schools Act, 1869, and that that being so the way in which those powers had been exercised was not the proper subject of appeal. Further, that a charity which has no instrument of foundation or statutes or duly authorized regulations impressing upon it a denominational character does not fall within the 19th clause of the Endowed Schools Act, 1869, or the 7th clause of the Endowed Schools Act, 1873, and its trustees cannot impress upon it that character, nor is any practice for the time being as to the application of its funds sufficient evidence of there ever having been regulations in existence which prescribed it. Where a charity is established by subscriptions, the original subscribers alone are the founders—the later benefactions are on the footing of the original foundation. If its regulations are relied upon as impressing upon it a denominational character, they must be shown to have been authorized by all the founders, and to have been issued before fifty years from their deaths.

In *Re The Free Grammar School and Hospital of Archbishop Holgate at Hemsworth, and the Grammar School at Barnsley* (L. R. 12 App. Cas. 444; 56 L. J. P. C. 52; 56 L. T. 212; 35 W. R. 418), it was held by the Privy Council that the removal of the site of a school is within the scope of the Endowed Schools Act, 1869, and the powers conferred on the commissioners by sec. 9. An annual sum temporarily applied to the purposes of the school is an endowment within the meaning of sec. 5. Sec. 19 does not relate to an endowment which has been (whatever its original foundation) subjected to a scheme providing that religious instruction in the liturgy, catechism, and articles of the Church of England shall be given, not to all boys, but to the boys of parents in that communion and the boys of other parents who do not object thereto in writing.

As to the powers of a Local Education Authority to become trustees for any educational endowment or charity for purposes connected with education, see sec. 13 of the 36 & 37 Vict., c. 86, *post*.

In *In re Bowen, Lloyd Phillips v. Davis* (1893) 2 Ch. 491; 62 L. J. Ch. 681, it appeared that the testator, who died in 1847, by his will dated in 1846 bequeathed two sums of money to trustees upon trust to establish schools in certain parishes, and to continue the same

for ever thereafter ; and he declared that if at any time the Government should establish a general system of education the several trusts of the said legacies should cease and determine, and he bequeathed the said sums of money in the same manner as he had bequeathed the residue of his personal estate ; and he appointed his three sisters to be his executrices and residuary legatees. An originating summons was taken out by the personal representatives of the residuary legatees raising the question whether the Government had by the Elementary Education Act, 1870, and the Acts amending it, established a general system of education, and whether the trusts of the two sums had ceased and determined, and whether those sums had fallen into the residuary estate. It was held by Mr. Justice Stirling that the testator had made an immediate disposition in favour of charity in perpetuity, followed by a gift over of a future interest to arise upon an event which need not necessarily occur within perpetuity limits ; and that the gift over consequently failed.

Inspection of Voluntary Schools by Inspector not one of Her Majesty's Inspectors.

76. Where the managers of any public elementary school not provided by a school board desire to have their school inspected or the scholars therein examined, as well in respect of religious as of other subjects, by any inspector other than one of Her Majesty's inspectors, such managers may fix a day or days not exceeding two in any one year for such inspection or examination.

The managers shall, not less than fourteen days before any day so fixed, cause public notice of the day to be given in the school, and notice in writing of such day to be conspicuously affixed in the school.

On any such day any religious observance may be practised and any instruction in religious subjects given at any time during the meeting of the school, but any scholar who has been withdrawn by his parent from any religious observance or instruction in religious subjects shall not be required to attend the school on any such day.

For definition of the term "managers," see sec. 3, *ante*.

This section will only apply to schools not provided by the Local Education Authority. As to the schools which are to be deemed to be so provided, see 2 Edw. 7, c. 42, Second Schedule (13), *ante*.

With regard to the withdrawal of children from religious instruction and observances, see sec. 7, *ante*.

Education Department may apply to Charity Commissioners under 16 & 17 Vict., c. 137, &c.

78. The Education Department shall, for the purposes of the Charitable Trusts Acts, 1853 to 1869, be deemed to be persons interested in any elementary school to which those Acts are applicable, and the endowment thereof.

The Charitable Trusts Acts are specified in the note to sec. 22, which extends the provisions of those Acts to the sale, leasing, and exchange of any land or school house belonging to a Local Education Authority, which may not be required by them.

See also sec. 2 (2) of the Board of Education Act, 1899 (62 & 63 Vict., c. 33, *post*), as to powers of the Charity Commissioners in matters which relate to education being exercised by the Board of Education, and the provision as to endowments in sec. 13 of 2 Edw. 7, c. 42, *ante*.

Notices may be served by Post.

81. Certificates, notices, requisitions, orders, precepts, and all documents required by this Act to be served or sent may, unless otherwise expressly provided, be served and sent by post, and till the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the certificate, notice, requisition, order, precept or document, was prepaid and properly addressed, and put into the post.

Notices to and by School Board.

82. Certificates, notices, requisitions, orders, and other documents may be served on a school board by serving the same on their clerk, or by sending the same to or delivering the same at the office of such board.

Certificates, notices, requisitions, orders, precepts, and other documents may be in writing or in print, or partly in writing and partly in print, and if requiring authentication by a school board, may be signed by their clerk.

Evidence of Orders, &c., of Education Department.

83. All orders, minutes, certificates, notices, requisitions, and documents of the Education Department, if purporting to be signed by some secretary or assistant secretary of the Education Department, shall, until the contrary is proved, be deemed to have been so signed and to have been made by the Education Department, and may be proved by the production of a copy thereof purporting to have been so signed.

The Documentary Evidence Act, 1868, shall apply to the Education Department in like manner as if the Education Department were mentioned in the first column of the schedule to that Act, and any member of the Education Department, or any secretary or assistant secretary of the Education Department, were mentioned in the second column of that schedule.

By the Documentary Evidence Act, 1868, *prima facie* evidence of any order or regulation issued by the Privy Council, or by or under the authority of any such department of the Government or officer as is mentioned in the first column of the schedule to the Act, may be given in all courts of justice, and in all legal proceedings, by the production—

- (1) of the *London Gazette* containing a copy of the order or regulation ; or,
- (2) of a copy of the order or regulation purporting to be printed by the Government printer ; or,
- (3) in the case of an order or regulation issued by the Privy Council, of a copy or extract purporting to be certified to be true by the clerk of the Privy Council, or by some one of the lords or others of the Privy Council, and in the case of any order or regulation issued by or under the authority of any of the departments or officers above referred to, of a copy or extract purporting to be certified to be true by the person or persons specified in the second column of the schedule in connection with such department or officer.

No proof is to be required of the handwriting or official position of any person certifying, in pursuance of the Act, to the truth of any copy of or extract from an order or regulation.

The provisions of this section were extended by sec. 45 of the 39 & 40 Vict., c. 79, *post*, so as to apply to orders and documents of the Education Department under that Act.

The Board of Education Act, 1899 (62 & 63 Vict., c. 33, *post*), by sec. 2 (1) provides that the Board of Education shall take the place of the Education Department, and that all enactments and documents shall be construed accordingly. See also the provisions in sec. 7 (2), (3), (4), of that Act as to the certifying and receiving in evidence of documents purporting to be issued by the Board.

The Documentary Evidence Act, 1882 (45 Vict., c. 9), also provides

that where it is enacted that a copy of any order, regulation, &c., shall be conclusive evidence, or be evidence, or have any other effect, when purporting to be printed by the Government printer or the Queen's printer, or a printer authorized by Her Majesty, or otherwise under Her Majesty's authority, whatever may be the precise expression used, such copy shall also be conclusive evidence, or evidence, or have the said effect (as the case may be) if it purports to be printed under the superintendence or authority of Her Majesty's Stationery Office.

Any person who prints any copy of any order or regulation which falsely purports to have been printed by the Government printer, or under the superintendence of Her Majesty's Stationery Office, or who tenders in evidence any copy which falsely purports to have been so printed, knowing that it was not so printed, or who forges or tenders in evidence, knowing the same to have been forged, any certificate by the Act of 1868 authorized to be annexed to a copy of or any extract from any order or regulation, is guilty of felony; and on conviction is liable to penal servitude for not exceeding seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Effect of Requisitions of Education Department.

84. After the expiration of three months from the date of any order or requisition of the Education Department under this Act, such order or requisition shall be presumed to have been duly made, and to be within the powers of this Act, and no objection to the legality thereof shall be entertained in any legal proceeding whatever.

The provisions of this section are extended by the 39 & 40 Vict., c. 79, sec. 45, *post*, so as to apply to orders or documents of the Education Department under that Act, and by operation of sec. 2 (1) of the 62 & 63 Vict., c. 33, *post*, the Board of Education take the place of the Education Department, and all enactments and documents are to be construed accordingly.

With regard to this section the case of *R. v. Justices of Flintshire (R. v. Sankey and others)* (L. R. 3 Q. B. D. 379; 47 L. J. M. C. 96) may be referred to. In that case the question raised was as to whether a conviction for personation at the voting on a resolution for an application for a school board could be sustained. The voting was under an order of the Education Department, which *inter alia* made certain provisions of the Ballot Act applicable so as to involve a penalty for personation. For the justices who convicted it was contended that the order was within the powers of the Education Department, and that apart from this, sec. 84 of the 33 & 34 Vict., c. 75, precluded any objection to the legality of the order, as three months had elapsed since the date of the order. Mr. Justice Mellor said: "We should be proceeding against the recognized principles of construction if we were so to extend the powers of the Department as to make personation on the voting on a resolution for a school board an offence without a direct statutory authority. As to sec. 84,

time never would pass to enlarge a jurisdiction that was not given." Mr. Justice Lush concurred. With regard to the provision in sec. 84, he said: "I think that it only applies to orders which may be irregular to a given extent. They may prescribe things which they have no right to prescribe. I cannot think that it was intended that it should validate an order (which really amounts to a legislative enactment creating a new offence) after the expiration of three months from the date of the order. It must be taken that the order in this case is a legislative provision without authority given for it by the Act, and it cannot be that this is a matter which was intended to be cured by three months elapsing without objection being taken to the order." The conviction was accordingly quashed.

Appearance of School Board.

85. A school board may appear in all legal proceedings by their clerk, or by some member of the board authorized by a resolution of the board; and every such resolution shall appear upon the minutes of the proceedings of the board, but every such resolution shall until the contrary is proved, be deemed in any legal proceeding to appear upon such minutes.

The Public Authorities Protection Act, 1893 (56 & 57 Vict., c. 61), contains provisions for the protection of persons in the case of actions, prosecutions, or other proceedings commenced against them "for any act done in pursuance or execution or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority."

In *Reid v. Blisland School Board*, an action was brought against the school board by the late schoolmaster of a school of the board for libel. It appeared that the plaintiff and his wife were employed by the school board to their satisfaction for ten years. The board having given him notice to quit their service, he pointed out that under his agreement they must specify the grounds of his dismissal. And at a subsequent meeting a resolution was read accusing the plaintiff of falsifying the attendance list, and also stating that the sewing taught was not of an efficient character. At the conclusion of the evidence for the plaintiff it was submitted for the school board that the Public Authorities Protection Act, 1893, applied, and that the action had not been commenced within six months as required by that Act. Mr. Justice Wills held that, looking to the provisions of the Act referred to, the judgment must be for the school board with costs.—(17 Times Law Rep. 626.)

For provisions as to legal proceedings, see sec. 92 of this Act, secs. 23 and 24 of the 36 & 37 Vict., c. 86, and secs. 37, 38, and 50 of the 39 & 40 Vict., c. 79, *post*.

*Tenure of Teacher and his Removal from House under
secs. 17 and 18 of 4 & 5 Vict., c. 38.*

86. The provisions of the School Sites Acts with respect to the tenure of the office of the schoolmaster or schoolmistress, and to the recovery of possession of any premises held over by a master or mistress who has been dismissed or ceased to hold office, shall extend to the case of any school provided by a school board, and of any master or mistress of such school, in the same manner as if the school board were the trustees or managers of the school as mentioned in those Acts.

The School Sites Act, 1841 (4 & 5 Vict., c. 38), which contains the provisions referred to (see secs. 17 and 18), will be found in the Appendix, p. 480.

In *Rendall v. Blair* (L. R. 45 Ch. D. 139; 59 L. J. Ch. 641; 38 W. R. 689), the plaintiff, a certificated teacher, had been appointed the head master of a national school, and had entered into possession of the school house by virtue of the appointment. The school was founded under a deed executed pursuant to the School Sites Acts, 4 & 5 Vict., c. 38, and the 7 & 8 Vict., c. 37, a piece of land being conveyed upon trust to permit the premises to be used for a school and as a residence for the teacher. The deed provided that the selection, appointment, and dismissal of the school teachers should be in all respects under the control and management of the incumbent and his curate and four other persons to be nominated annually by the incumbent. The defendants, the vicar and four other persons acting as managers of the school, gave the plaintiff notice that his services at the expiration of three months would not be required. The plaintiff alleged that in consequence of certain invalid appointments some of the defendants were not managers of the school at the date of the notice of dismissal, and that if they were managers they had dismissed him improperly. He claimed an injunction to restrain the defendants from dismissing him from his office, and from electing any other person to the office, and from ejecting him from the school house occupied by him in virtue of his office. The plaintiff had not obtained under sec. 17 of the Charitable Trusts Act, 1853 (16 & 17 Vict., c. 137), a certificate from the Charity Commissioners authorizing him to bring his action, and the defendants raised the objection to his right to sue that he had not first obtained this certificate. The Court of Appeal (Bowen and Fry, L.JJ., Cotton, L.J., dissenting) held—reversing the decision of Kay, J.—that although the action might incidentally involve the consideration of the deed of trust of the charity, it was not such an action as required the consent of the Charity Commissioners. The Court further held that even if the consent of the Charity Commissioners were necessary, it was not necessary to obtain it before the commencement of the action, and that it would not be right to dismiss the action without giving the plaintiff the opportunity of ascertaining whether the Commissioners would give their consent.

In the case of the *Ichingfield School Board v. Brooke*, which was heard in May, 1894, in the Queen's Bench Division before Mr. Justice

Grantham and a jury, the school board sued the defendant to recover possession of a house which was attached to the office of head master of the school of the school board. The defendant had held the office of master and was dismissed, a month's notice being given, but he refused to give up possession of the house. He contended that he had not been properly dismissed, as the board when they gave him notice were not properly constituted. He also claimed three months' notice. The objection to the constitution of the board was that the rector of the parish, although a member of the board, had not received notice of the meeting at which the motion for the dismissal was carried, and was therefore unable to attend and take part in the proceedings of the meeting. The school board considered the rector out of office at the time, as he had not, as they alleged, attended any meeting during a period of six months, and had therefore become disqualified. He had on one occasion within the period referred to gone to the school, where he met the other members of the board, but this it was argued was not a meeting of the board. The jury found that the meeting with other members of the school board at the schoolroom on the occasion referred to was not a meeting of the board, that the dismissal was good, and that the month's notice was reasonable.

With respect to the appointment and tenure of office of teachers in schools not provided by a Local Education Authority, see 2 Edw. 7, c. 42, sec. 7 (1) (a) (c), (5), and (7), *ante*.

The cases of *Nott v. Williams* (48 W. R. 316), *Fisher v. Jackson* ([1891] 2 Ch. 84; 60 L. J. C. D. 482; 64 L. T. 782), *Laue v. Norman* (61 L. J. C. D. 149; 66 L. T. 83; 40 W. R. 268), and *Pottle v. Sharp* (65 L. J. Ch. 908; 75 L. T. 265), refer to the appointment or dismissal of teachers under the provisions of trust deeds.

Recovery of Penalties.

92. Any penalty and any money which under this Act is recoverable summarily, and all proceedings under this Act which may be taken in a summary manner, may be recovered and taken before two justices in manner directed by an Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and the Acts amending the same.

For further provisions with regard to recovery of penalties and summary proceedings, see 36 & 37 Vict., c. 86, secs. 23 and 24, *post*.

Effect of Schedules.

94. The schedules to this Act shall be of the same force as if they were enacted in this Act, and the Acts mentioned

in the Fourth Schedule to this Act may be cited in the manner in that schedule mentioned.

Returns by School Board.

95. Every school board shall make such report and returns and give such information to the Education Department as the Department may from time to time require.

See also sec. 13 of the 62 & 63 Vict., c. 11, *post*, as to the duty of a Local Education Authority to make returns and give information to the Board of Education respecting their proceedings under that Act.

(II.) PARLIAMENTARY GRANT.

Parliamentary Grant to Public Elementary School only.

96. After the thirty-first day of March, one thousand eight hundred and seventy-one, no parliamentary grant shall be made to any elementary school which is not a public elementary school within the meaning of this Act.

No parliamentary grant shall be made in aid of building, enlarging, improving, or fitting up any elementary school, except in pursuance of a memorial duly signed, and containing the information required by the Education Department for enabling them to decide on the application, and sent to the Education Department on or before the thirty-first day of December, one thousand eight hundred and seventy.

For definition of "public elementary school," see sec. 7.

As to conditions of annual parliamentary grant, see sec. 97, and notes on the section.

Conditions of Annual Parliamentary Grant.

97. The conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant shall be those contained in the minutes of the Education Department in force for the time being (1), and shall amongst other matters provide that after the thirty-first day of March, one thousand eight hundred and seventy-one—

(1.) Such grant shall not be made in respect of any instruction in religious subjects

but such conditions shall not require that the school shall be in connection with a religious denomination, or that religious instruction shall be given in the school, and shall not give any preference or advantage to any school on the ground that it is or is not provided by a school board

Provided that no such minute of the Education Department not in force at the time of the passing of this Act shall be deemed to be in force until it has lain for not less than one month on the table of both Houses of Parliament.

(1) The conditions which, under the Day School Code, 1902, are required to be fulfilled in order to obtain an annual parliamentary grant are set forth in Arts. 76-92 of the Code (see pp. 636-646).

It will be observed from Art. 92 of the Code that in cases where any of the conditions set forth in the Code (except such conditions as are specially imposed by Act of Parliament) are not fulfilled, the Board of Education have power, after considering all the circumstances, to pay the grant or a portion of the grant and give a warning to the managers that the grant may be withheld next year.

See also sec. 7 and with regard to schools not provided by a Local Education Authority, 2 Edw. 7, c. 42, sec. 7, *ante*.

As to the powers of the managers of an elementary school to fulfil the conditions required to be fulfilled to obtain a parliamentary grant notwithstanding any provisions contained in any instrument regulating the trust or management of their school, see sec. 99 and 2 Edw. 7, c. 42, Third Schedule (7), *ante*.

The Second Schedule (11) and (12) to that Act contains provisions which enable the Board of Education, when required for the purpose of bringing the accounts of a school board to a close before the end of the financial year of the school or for the purpose of making any change consequent on the Act, to calculate any parliamentary grant in respect of any month or other period less than a year, and to pay any parliamentary grant which has accrued before the "appointed day" at such times and in such manner as they think fit; and also provisions as to the payment and application of any parliamentary grant payable to a public elementary school not provided by a school board in respect of a period before "the appointed day."

As to the parliamentary grant in lieu of the grants which were paid under the repealed provisions of this section, as amended by the Elementary Education Act, 1897, and under the Voluntary Schools Act, 1897, see sec. 10 of 2 Edw. 7, c. 42, *ante*.

See also the provisions of sec. 19 of the 39 & 40 Vict., c. 79, and sec. 2 of the 53 & 54 Vict., c. 22, *post*, as to special parliamentary grants, and secs. 1-4 and 6 of the 54 & 55 Vict., c. 56, as to "fee grants."

With respect to grants to industrial schools, see secs. 16 and 17 of the 39 & 40 Vict., c. 79, *post*.

Refusal of Grant to Unnecessary Schools.

98. If the managers of any school which is situate in the district of a school board acting under this Act, and is not previously in receipt of an annual parliamentary grant, whether such managers are a school board or not, apply to the Education Department for a parliamentary grant, the Education Department may, if they think that such school is unnecessary, refuse such application. (1)

The Education Department shall cause to be laid before both Houses of Parliament in every year a special report stating the cases in which they have refused a grant under this section during the preceding year, and their reasons for each such refusal. (2)

(1) For definition of the term "managers," see sec. 3.

See also secs. 8 and 9 of 2 Edw. 7, c. 42, *ante*, as to proposals to provide new public elementary schools or to enlarge such schools, and appeals to the Board of Education against such proposals. Any school built in contravention of the decision of the Board of Education on any such appeal is to be treated as unnecessary. A school for the time being recognized as a public elementary school is not, however, to be considered unnecessary if the number of scholars in average attendance, as computed by the Board of Education, is not less than thirty.

(2) The annual report of the Board of Education gives a statement of the cases in which during the year a grant has been refused. The reason which has been usually assigned for the refusal is to the effect that there is no deficiency of accommodation in the district.

Power of Schools to take Parliamentary Grants.

99. The managers of every elementary school shall have power to fulfil the conditions required in pursuance of this Act to be fulfilled in order to obtain a parliamentary grant, notwithstanding any provision contained in any instrument regulating the trusts or management of their school, and to apply such grant accordingly.

As to the conditions to be fulfilled in order to obtain a parliamentary grant, see sec. 97, *ante*, and notes thereon.

This section also applies to the fulfilment of any conditions, the performance of any duties, and the exercise of any powers under 2 Edw. 7, c. 42, as it applies to the fulfilment of conditions required in pursuance of this Act to be fulfilled in order to obtain a parliamentary grant (2 Edw. 7, c. 42, Third Schedule (7), *ante*).

With reference to trust deeds, see also sec. 11 of 2 Edw. 7, c. 42, *ante*.

REPORT.

Annual Report of Education Department.

100. The Education Department shall in every year cause to be laid before both Houses of Parliament a report of their proceedings under this Act during the preceding year.

FOURTH SCHEDULE.

SCHOOL SITES ACTS.

The following Acts may be cited together as the "School Sites Acts, 1841 to 1851."

Year and Chapter of Act.	Title of Act.	Short Title by which Acts may be cited.
4 & 5 Vict., c. 38	An Act to afford further facilities for the conveyance of endowment of sites for schools.	The School Sites Act, 1841.
7 & 8 Vict., c. 37	An Act to secure the terms on which grants are made by Her Majesty out of the parliamentary grant for the education of the poor; and to explain the Act of the fifth year of Her present Majesty, for the conveyance of sites for schools.	The School Sites Act, 1844.
12 & 13 Vict., c. 49.	An Act to extend and explain the provisions of the Acts for the granting of sites for schools.	The School Sites Act, 1849.
14 & 15 Vict., c. 24.	An Act to amend the Acts for the granting of sites for schools.	The School Sites Act, 1851.

These several Acts will be found in the Appendix, p. 471.

ELEMENTARY EDUCATION ACT, 1873.

(36 & 37 VICT., c. 86.)

AN ACT TO AMEND THE ELEMENTARY EDUCATION ACT (1870), AND FOR OTHER PURPOSES CONNECTED THEREWITH.

[5th August, 1873.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

The following sections of this Act are the provisions which apply to England and Wales, with the exception of the "Metropolis," from the "appointed day" under sec. 27 of 2 Edw. 7, c. 42.

In connection with these sections it is to be borne in mind—

(1) *That references in this Act to school boards and school districts are from the "appointed day" to be construed as references to Local Education Authorities and the areas for which they act (2 Edw. 7, c. 42, Third Schedule (1),*

(2) *That the Local Education Authorities throughout their area from the "appointed day" have the powers and duties of a school board and school attendance committee, and school boards and school attendance committees are abolished (2 Edw. 7, c. 42, sec. 5); and*

(3) *That a Local Education Authority may delegate to the education committee with or without any restrictions or conditions as they think fit any of their powers except the power of raising a rate or borrowing money (2 Edw. 7, c. 42, sec. 17).*

PRELIMINARY.

Short Title.

1. This Act may be cited as "The Elementary Education Act, 1873;" and this Act and "The Elementary Education Act, 1870" (in this Act referred to as the

principal Act), may be cited together as "The Elementary Education Acts, 1870 and 1873."

See note to sec. 27 (4) of 2 Edw. 7, c. 42, *ante*, as to the Elementary Education Acts, 1870 to 1900.

Construction of Act.

2. This Act shall be construed as one with the principal Act, and the expression "this Act" in the principal Act shall be construed to include this Act.

Power of School Board to accept Gifts for Educational Purposes.

13. A school board shall be able and be deemed always to have been able to be constituted trustees for any educational endowment or charity for purposes connected with education, whether such endowment or charity was established before or after the passing of the principal Act, and to have and always to have had power to accept any real or personal property given to them as an educational endowment or upon trust for any purposes connected with education: Provided that—

- (1.) Nothing in this section shall enable a school board to be trustees for or accept any educational endowment, charity, or trust, the purposes of which are inconsistent with the principles on which the school board are required by section fourteen of the principal Act to conduct schools provided by them; and,
- (2.) Every school connected with such endowment, charity, or trust shall be deemed to be a school provided by the school board, except that nothing in this section shall authorize the school board to expend any money out of the local rate for any purpose other than elementary education; and,
- (3.) Nothing in this section shall affect the law of mortmain or the Act of the ninth year of the reign of King George the Second, chapter thirty-six.

Sec. 14 of the principal Act (33 & 34 Vict., c. 75), *ante*, requires that a school provided by a Local Education Authority shall be conducted as a public elementary school, and that no religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school.

Schools which are deemed to have been provided by a school board are to be deemed to be provided by the Local Education Authority : see 2 Edw. 7, c. 42, Second Schedule (13).

With reference to the transfer of an endowment to a Local Education Authority, see note to sec. 23 of the 33 & 34 Vict., c. 75, as to the cases of *The London School Board v. Faulconer, Gurney and others v. West Ham School Board*, and *The Llanbadarnfawr School Board v. The Official Trustees of Charitable Trusts*.

In *Re Poplar and Blackwall Free School* (L. R. 8 Ch. Div. 545), the Master of the Rolls observed : " A difficulty sometimes occurs in cases where an existing charity school is transferred to a school board, and a new scheme has to be prepared for the regulation of the charity fund. Application of the fund for the general purposes of the school is objectionable, because that is really a grant in aid of rates, and not strictly for the benefit of the school. I think that the fund should be applied somewhat in the mode suggested, that is, for the advancement of learning in the school ; as, for instance, in establishing exhibitions or scholarships."

In *R. v. Charity Commissioners for England and Wales* (1897), 1 Q. B. 407, it appeared that, under a scheme under the Endowed Schools Act, 1869, and amending Acts, six competent persons, duly qualified to discharge the duties of the office of almoner, were to be appointed by the Governors of Christ's Hospital on the recommendation of the School Board for London. The School Board, on a vacancy occurring, nominated a lady as almoner, but the governors refused to appoint her on the ground that, being a woman, she was not qualified to be appointed under the scheme, and further that they had a discretion to refuse to appoint a person, even though duly qualified to discharge the duties of the office and duly recommended. The London School Board then applied to the Charity Commissioners to determine, under clause 143 of the scheme, the regularity or validity of the proceedings of the governors in refusing to appoint the lady nominated by the Board as an almoner. Clause 143 provided " that any question affecting the regularity or validity of any proceeding under the scheme shall be determined conclusively by the Charity Commissioners." The Charity Commissioners refused to decide the question, and the London School Board applied for a *mandamus* to compel the Charity Commissioners to do this. It was held by the Court (Wright and Bruce, JJ.) that a *mandamus* ought not to issue on the ground that the School Board had alternative, convenient and effectual remedies, namely, by proceedings to have the question decided under section 28 of the Charitable Funds Act, 1853, or by action against the governors in the ordinary course.

As to extension of the provisions of the Endowed Schools Act as to schools, or endowments of schools to schools in receipt of a parliamentary grant, and the power of the Board of Education to approve schemes in such cases, see sec. 75 of the 33 & 34 Vict., c. 75, *ante*.

See also sec. 2 (2) of the Board of Education Act, 1899, 62 & 63 Vict., c. 33, *post*, with respect to the exercise by the Board of Education of powers of the Charity Commissioners in matters which relate to education, and sec. 13 of 2 Edw. 7, c. 42, *ante*, as to endowments.

It may be observed that the Charities Inquiries (Extension) Act, 1892 (55 & 56 Vict., c. 92), empowers the council of any county or county borough, if they think fit, to pay or contribute towards the expenses of any inquiry conducted by the Charity Commissioners

into any charities which are by the trusts governing their administration expressly appropriated in whole or in part for the benefit of their county or county borough, or of any part thereof. The payment or contribution may be made out of the county fund, or in the case of a county borough out of the borough fund or borough rate.

With regard to the term "local rate" it is to be construed as referring to the rate out of which the expenses of the Local Education Authority are payable (2 Edw. 7, c. 42, Third Schedule (2)).

The Act 9 Geo. 2, c. 36, was repealed by 51 & 52 Vict., c. 42. See note to sec. 23 (5) of 2 Edw. 7, c. 42, *ante*.

Amendment of 29 & 30 Vict., c. 118, s. 12, as applied to School Boards.

14. Where a school board exercises the powers of a prison authority under the Industrial Schools Act, 1866, not less than fourteen days', instead of not less than two months', previous notice shall be given of the intention of the school board to take into consideration the making of the contribution mentioned in section twelve of that Act.

As regards the powers of a Local Education Authority as to certified industrial schools and certified day industrial schools, see secs. 27 and 28 of the 33 & 34 Vict., c. 75, *ante*, secs. 15 and 16 of the 39 & 40 Vict., c. 79, secs. 2 and 3 of the 42 & 43 Vict., c. 48, and sec. 4 of the 63 & 64 Vict., c. 53, *post*.

For provisions of sec. 12 of the Industrial Schools Act, 1866, see note to sec. 27 of the 33 & 34 Vict., c. 75, *ante*. It is to be observed, that the Youthful Offenders Act, 1901 (p. 522 of Appendix), provides that where a local authority acting in pursuance of the Acts relating to Industrial Schools or the Elementary Education Acts, 1870 to 1900, agree to contribute a weekly payment towards the maintenance of a child in any industrial school, the requirements of the first proviso to sec. 12 of the Industrial Schools Act, 1866, and of sec. 14 of the Elementary Education Act, 1873 (relating to previous notice of intention to contribute), shall not apply to such contribution.

Amendment of 33 & 34 Vict., c. 75, s. 20.

15. For the purpose of the purchase of land otherwise than by agreement under section twenty of the principal Act, the Act confirming an order of the Education Department for such purchase, together with the principal Act, shall be deemed to be the special Act.

The Act of 1870, by sec. 20, provided, with reference to the compulsory purchase of sites for schools, that in construing the Lands Clauses Acts for the purposes of that section, the "special Act" should be taken to mean that Act, *i.e.*, the Act of 1870. It is now provided that that Act and the Act confirming the order of the Board of Education for the purchase are to be deemed the "special Act."

Extension of 33 & 34 Vict., c. 75, s. 70, as to Returns.

19. Where the Education Department have power under the principal Act to require any local authority to send to them a return, the Education Department, without requiring such local authority to make the return, shall have the same power of appointing a person or persons to make such return as they would have under section 70 of the principal Act if the local authority had been required to make and had failed to make such return.

The Local Education Authority, as the local authority under sec. 69 of the 33 & 34 Vict., c. 75, *ante*, may, under sec. 67 of that Act, be required by the Board of Education not oftener than once in every year to send to the Board a return, containing such particulars with respect to the elementary schools and children requiring elementary education in their district as the Board of Education may from time to time require. Sec. 70 of that Act empowers the Board of Education in the case of the failure of the local authority to make the returns required, to appoint any person or persons to make such returns. The power of the Board of Education, it will be observed, is extended, so as to enable them in the first instance to appoint a person to make these returns, without first applying to the local authority for them.

Notices for Purposes of Elementary Education Acts.

20. Notices and other matters required by the Elementary Education Acts, 1870 and 1873, to be published, shall, unless otherwise expressly provided, be published either by advertisement, and by affixing the same on the doors of churches and chapels, and other public places, or in such other manner as the Education Department may either generally or with respect to any particular district, place, or notice, or class of districts, places, or notices, by order determine, as being in their opinion sufficient for giving information to all persons interested (1); and all overseers, assistant overseers, and officers of guardians shall comply with the directions of the Education Department with respect to such notices, and any expenses incurred by them in carrying into effect this section may be paid as their expenses under the Acts relating to the relief of the poor. (2)

Every person who wilfully tears down, injures, or defaces any notice affixed in pursuance of the Elementary Education Acts, 1870 and 1873, or any order of the Education Department made thereunder, shall be liable, on summary conviction, to a penalty not exceeding forty shillings. (3)

(1) The 33 & 34 Vict., c. 75, *ante*, by sec. 80, which has been repealed, rendered it necessary, in every case where it was not otherwise expressly provided by that Act, that notices and other matters required to be published should be published by advertisement in one or more newspapers, as well as by causing copies to be affixed on church and chapel doors and other places to which public notices were usually affixed.

An order of the Education Department dated the 15th of October, 1875, as to the publication of notices with regard to the deposit of bye-laws, provides as follows :

From and after the date of the present order, the notice of deposit of bye-laws under sec. 74 of the Elementary Education Act, 1870, shall be published only by advertisement in some one or more of the newspapers circulating in the district of the board whose bye-laws are so deposited.

(2) Sec. 34 of the 39 & 40 Vict., c. 79, which provided that expenses incurred by officers of guardians in carrying into effect this section, when paid by the guardians, might be charged by them to the parish in respect of which such expenses were incurred, is repealed by 2 Edw. 7, c. 42.

(3) As to proceedings for recovery of penalties, see sec. 23.

Returns by Schools to School Boards.

22. In any school district in which a bye-law under section seventy-four of the principal Act is in force, the school board of such district may from time to time supply forms to any public elementary school for the purpose of obtaining reasonable information with respect to the attendance of children residing in their district who attend such school ; and the managers of such school, if they fail to cause such forms to be truly filled up and returned in manner required by the school board, or to cause such information to be given as will enable the school board to ascertain whether a child resident within their district and attending that school attends the same in manner required by the said bye-law, shall cause to be produced to such member or officer of the school board or other person as may be duly authorized in that behalf by the school board at any reasonable time when required by him, the registers and other books and documents containing information with respect to the attendance of children at such school, and shall permit him to inspect and take copies of and extracts from the same.

If any difference arises between a school board and the managers of a public elementary school as to whether the information required by the said forms is or is not reasonable, such difference shall be referred to the Education Department, whose decision shall be final.

For definition of the term "managers," see sec. 3 of 33 & 34 Vict., c. 75, *ante*.

In a case in which the superintendent visitor of the London school board desired to obtain the names of the children on the roll of a voluntary school for the purpose of verifying the returns of the annual scheduling, the Education Department held that this was undoubtedly reasonable information with respect to the attendance of children within the meaning of this section, and accordingly decided that the managers must either furnish the information asked for or allow any person duly authorized by the school board to inspect the registers of the school.

Legal Proceedings.

23. All offences and penalties under the principal Act or this Act, or any bye-law under the principal Act, which may be prosecuted or recovered on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts.

The court of summary jurisdiction, when hearing and determining an information or complaint, shall be constituted either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace.

With regard to the service of summonses by the police, recovery of penalties, applications for distress warrants, costs of distress, and adjudications by members of school boards on school board summonses, see note 10 on sec. 74 of the 33 & 34 Vict., c. 75, *ante*.

Regulations as to Legal Proceedings.

24. With respect to proceedings before a court of summary jurisdiction (1) for offences and penalties under the principal Act, or this Act, or any bye-law under the principal Act, the following provisions shall have effect:— . . . (2)

(3.) In any proceeding for an offence under a bye-law, the court may, instead of inflicting a penalty, make an order directing that the child shall attend school, and that, if he fail so to do, the person on whom such order is made shall pay a penalty not exceeding the penalty to which he is liable for failing to comply with the bye-law: (3)

- (4) Any justice may require by summons any parent or employer of a child, required by a bye-law to attend school, to produce the child before a court of summary jurisdiction, and any person failing, without reasonable excuse to the satisfaction of the court, to comply with such summons shall be liable to a penalty not exceeding twenty shillings :
- (5.) A certificate purporting to be under the hand of the principal teacher of a public elementary school, stating that a child is or is not attending such school, or stating the particulars of the attendance of a child at such school, or stating that a child has been certified by one of Her Majesty's Inspectors to have reached a particular standard of education, shall be evidence of the facts stated in such certificate : (4)
- (6.) Where a child is apparently of the age alleged for the purposes of the proceeding, it shall lie on the defendant to prove that the child is not of such age : (5)
- (7.) If a child is attending an elementary school which is not a public elementary school, it shall lie on the defendant to show that the school is efficient, and the court in considering whether an elementary school is efficient, shall have regard to the age of the child and to the standard of education corresponding to such age prescribed by the minutes of the Education Department for the time being in force with respect to the parliamentary grant :
- (8.) Where a school board are, by reason of the default of the managers or proprietor of an elementary school, unable to ascertain whether a child, who is resident within the district of such school board and attends such school, attends school in conformity with a bye-law made by such school board, it shall lie on the defendant to show that the child has attended school in conformity with the bye-law : (6)
- (9.) Any person may appear by any member of his family or any other person authorized by him in this behalf. (7)

(1) As to "Court of Summary Jurisdiction," see sec. 23.

(2) Sub-clauses 1 and 2 of this section were repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict., c. 43). These

clauses were as follows : (1.) The description of the offence in the words of the Act or bye-law, or as near thereto as may be, shall be sufficient in law. (2.) Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in the Act or bye-law, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived no proof in relation to the matters so specified or negatived shall be required on the part of the informant. Provisions to the same effect as those repealed are contained in sec. 39 (1) and (2) of the Summary Jurisdiction Act, 1879 (42 & 43 Vict., c. 79).

(3) With regard to the penalty for failing to comply with a bye-law, see sec. 74 of the 33 & 34 Vict., c. 75, *ante*, and sec. 6 (2) of the 63 & 64 Vict., c. 53, *post*.

(4) The word "reached" is construed by the Board of Education as meaning "passed."

As to the offence of forging or counterfeiting a certificate, or giving or signing a false certificate, or knowingly using a forged or false certificate, see sec. 25. The standards of elementary education referred to are those prescribed by the Code, see p. 648.

(5) The 39 & 40 Vict., c. 79, by secs. 25 and 26, *post*, provides facilities for obtaining certified copies of entries in the registers of births for purposes connected with elementary education.

(6) With regard to the powers of Local Education Authorities to obtain information as to attendance of children at public elementary schools not provided by them, see sec. 22, *ante*.

(7) As to the appearance of the Local Education Authority in legal proceedings, see sec. 85 of the 33 & 34 Vict., c. 75, *ante*.

Forgery of Certificate, and giving False Information.

25. Every person who forges or counterfeits any certificate which is by this Act made evidence of any matter, or gives or signs any such certificate which is to his knowledge false in any material particular or, knowing any such certificate to be forged, counterfeit, or false, makes use thereof, shall be liable on summary conviction to imprisonment for a period not exceeding three months, with or without hard labour.

This section is extended, by sec. 37 of the 39 & 40 Vict., c. 79, *post*, to the forgery of certificates under that Act.

DEFINITIONS AND REPEAL.

Interpretation.

27. In this Act—

The term "guardians" includes any body of persons performing the functions of guardians within the

meaning of the Acts relating to the relief of the poor :

The term "union" means any union or incorporation of parishes under any general or local Act, and any single parish having guardians as defined by this Act under any general or local Act :

The term "common fund" means, in the case of a union which comprises only one parish, the fund applicable to the relief of the poor of such parish : . . .

Repeal and Savings.

28. The principal Act is hereby repealed, to the extent specified in the third column of the fourth schedule to this Act.

Provided that—

- (1.) Any order or regulation of the Education Department made under any enactment hereby repealed shall continue in force as if it had been made under this Act :
- (2.) Any school board elected under any enactment hereby repealed shall continue and be deemed to have been elected under this Act :
- (3.) The repeal of any Act or enactment by this Act shall not—
 - (a.) Affect anything duly done or suffered under any such Act or enactment ; or
 - (b.) Affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any such Act or enactment, or bye-law ; or
 - (c.) Affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any such Act, enactment, or bye-law ; or
 - (d.) Affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid ; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

WENLOCK ELEMENTARY EDUCATION ACT.

(37 & 38 VICT., C. 39.)

AN ACT TO PROVIDE FOR THE EXCEPTION OF THE BOROUGH OF WENLOCK FROM THE CATEGORY OF BOROUGHES UNDER THE "ELEMENTARY EDUCATION ACT, 1870."

[30th July, 1874.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Wenlock not to be deemed a Borough, &c.

1. That for the purposes of the "Elementary Education Act, 1870," the municipal borough of Wenlock shall not be deemed to be a borough, and the elections of school boards within the said borough shall take place and be conducted in the manner and under the Regulations in such Act provided for a parish.

This Act is not included amongst the Acts expressly repealed by 2 Edw. 7, c. 42, but it appears to be rendered inoperative by that Act.

The provision that for "the purposes of the Elementary Education Act, 1870, the municipal borough of Wenlock shall not be deemed to be a borough" does not appear to exclude, in the case of this borough, which at the last census had a population exceeding ten thousand, the operation of sec. 1 of 2 Edw. 7, c. 42, under which the council of a non-county borough with a population of over ten thousand is constituted the Local Education Authority for that borough for the purpose of elementary education. As regards the provision as to the election of a school board, the Local Education Authority have the powers and duties of a school board from the appointed day : see sec. 5 of last-mentioned Act.

THE ELEMENTARY EDUCATION ACT, 1876.

(39 & 40 VICT., C. 79.)

AN ACT TO MAKE FURTHER PROVISION FOR ELEMENTARY EDUCATION.

[15th August, 1876.]

WHEREAS it is expedient to make further provision for the education of children, and for securing the fulfilment of parental responsibility in relation thereto, and otherwise to amend and to extend the Elementary Education Acts :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

The following sections of this Act are the provisions which apply to England and Wales, with the exception of the Metropolis, from the "appointed day" under sec. 27 of 2 Edw. 7, c. 42.

In connection with these sections, it is to be borne in mind—

(1) *That from the appointed day references in this Act to a school board are to be construed as references to the Local Education Authorities, and that the Local Education Authorities are therefore the local authority for the purposes of this Act, and that a reference to a school district is to be construed as a reference to the area for which the Local Education Authority act, except in the case of paragraph 2 of sec. 19 ;*

(2) *That from "the appointed day" the Local Education Authority throughout their area have the powers and duties of a school board and school attendance committee, and that school boards and school attendance committees are abolished ; and*

(3) *That a Local Education Authority may delegate to the education committee, with or without any restrictions or conditions as they think fit, any of their powers, except the power of raising a rate or borrowing money.*

PRELIMINARY.

Short Title.

1. This Act may be cited as the "Elementary Education Act, 1876."

See note to sec. 27 (4) of 2 Edw. 7, c. 42, *ante*, as to the "Elementary Education Acts, 1870 to 1900."

Extent of Act.

2. This Act shall not, save as otherwise expressly provided, apply to Scotland or Ireland.

By sec. 53 it is provided that the provisions in this Act with respect to the conditions to be fulfilled by schools in order to obtain an annual parliamentary grant shall apply to Scotland.

Commencement of Act.

3. This Act shall, save as otherwise expressly provided, come into operation on the first day of January, one thousand eight hundred and seventy-seven (which day is in this Act referred to as the commencement of this Act).

PART I.

LAW AS TO EMPLOYMENT AND EDUCATION OF CHILDREN.

Declaration of Duty of Parent to educate Child.

4. It shall be the duty of the parent of every child to cause such child to receive efficient elementary instruction in reading, writing, and arithmetic, and if such parent fail to perform such duty, he shall be liable to such orders and penalties as are provided by this Act.

Prior to the passing of the present Act there was no express statutory declaration as to the duty of a parent to cause his child to receive efficient elementary instruction. The word "child" is defined by sec. 48 as meaning a child between the ages of five and fourteen years.

Terms in this Act are, so far as is consistent with the tenor thereof, to have the same meaning as in the Elementary Education Acts, 1870 and 1873. The term "parent," therefore, "includes guardian and every person who is liable to maintain or has the actual custody of any child" (see 33 & 34 Vict., c. 75, sec. 3, *ante*). This definition includes the father and grandfather, and the mother and grandmother of a child, as by the 43 Eliz., c. 2, sec. 7, they are liable to maintain the child. See also *Hance v. Burnett*, in note to sec. 11 of this Act, and *Hance v. Fairhurst*, and *School Board for London v. Jackson*, in note to sec. 12.

For provisions as to orders and penalties, see secs. 11, 12, and 37.

Regulation as to Employment of Child under 10, and Certificate of Education or previous School Attendance being Condition of Employment of Child over 10.

5. A person shall not, after the commencement of this Act, take into his employment (except as hereinafter in this Act mentioned) any child—

- (1.) Who is under the age of [ten] years ; or
- (2.) Who, being of the age of [ten] years or upwards, has not obtained such certificate either of his proficiency in reading, writing, and elementary arithmetic, or of previous due attendance at a certified efficient school, as is in this Act in that behalf mentioned, unless such child, being of the age of [ten] years or upwards, is employed, and is attending school in accordance with the provisions of the Factory Acts, or of any bye-law of the local authority (hereinafter mentioned) made under section seventy-four of the Elementary Education Act, 1870, as amended by the Elementary Education Act, 1873, and this Act, and sanctioned by the Education Department.

The date of the commencement of this Act was the 1st of January, 1877.

This section prohibits a person taking into his employment any child who is under the age of *ten* years, but this limit of age is extended by sec. 1 of the 56 & 57 Vict., c. 51, and sec. 1 of the 62 & 63 Vict., c. 13, to *twelve* years, subject to the exceptions specified in the last-mentioned Act.

By sec. 4 of the 43 & 44 Vict., c. 23, *post*, as amended by sec. 6 (1) of the 63 & 64 Vict., c. 53, it is provided that any person who takes into his employment a child under the age of *fourteen* years, resident in a school district, before that child has obtained a certificate of having reached the standard of education fixed by a bye-law in force in the district for the total or partial exemption of children of the like age from the obligation to attend school, shall be deemed to take such child into his employment in contravention of the Elementary Education Act, 1876, and shall be liable to a penalty accordingly.

Sec. 2 of the 56 & 57 Vict., c. 51, further provides as follows :—“ If any person takes a child into his employment in such manner as to prevent the child from attending school in accordance with the bye laws for the time being in force in the district in which the child resides, he shall be deemed to take the child into his employment in contravention of the Elementary Education Act, 1876, and shall be liable to a penalty accordingly.”

In the case of a child who by the bye-laws in force is required to attend school full time, or of a child who is required by the bye-laws to attend school as a half-timer, the bye-laws must be strictly complied with, and any person taking a child into his employment so as to

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who is attending school in accordance with the bye-laws is to be deemed to take the child into his employment in contravention of this Act and is liable to the penalty referred to in sec. 6.

The Board of Education in their Report 1901-2 state: "In manufacturing districts a threatened collision between the labour provisions of the Factory Act and those contained in the bye-laws has been averted by the adoption of an attendance qualification for exemption in the case of children over thirteen."

When the bye-laws only apply to children under the age of thirteen years or a less age, the provisions of this Act as regards school attendance (see secs. 4, 11, and 12), and employment (see secs. 6, 7, 9, 29, 39, and 47), will apply to children who are above the maximum age referred to in the bye-laws and are under the age of fourteen years.

For the provisions as to bye-laws, see sec. 74 of the 33 & 34 Vict. c. 75, *ante*.

Apart from any question of bye-laws it is provided by the 63 & 64 Vict., c. 21, Mines (Prohibition of Child Labour Underground) Act, 1900, that a boy under the age of thirteen years shall not be employed or be allowed to be for the purpose of employment in any mine below ground. See Appendix, p. 509.

With regard to exceptions from the prohibition of employment in the case of children under the age of fourteen years and above the maximum age specified in the bye-laws when that age is less than fourteen years, see sec. 9.

A parent who employs his child in any labour exercised by way of trade or for purposes of gain is to be deemed for the purposes of this Act to take the child into his employment (see sec. 47). As to the construction of that section, see the case of *Mather v. Lawrence* in the note to that section.

As regards blind and deaf children, there are special provisions. See 56 & 57 Vict., c. 42, *post*. And as to epileptic and defective children, see 62 & 63 Vict., c. 32, *post*.

As to the enforcement of the provisions prohibiting employment of children, see sec. 7. As to penalties, see secs. 6, 9, 37, 39, 47, and 50.

Sec. 29 contains a provision with reference to the entry on premises for the purpose of ascertaining whether children are employed in contravention of the Act.

As regards proof of age for the purpose of this section, sec. 25 affords facilities for obtaining certified copies of the entries in the register of births for the purpose of this section. See also regulations of the Board of Education as to certificates of age in Appendix, p. 548.

As to the standards of proficiency in reading, writing and elementary arithmetic, and of previous due attendance at a certified efficient school for certificates under this Act, see sec. 24, and Rules 1 and 2 in the First Schedule. The regulations which have been issued by the Board of Education with reference to these certificates will be found in the Appendix, pp. 549, 550. These regulations also provide for the local authorities granting "Labour Certificates" in the cases of children qualified for total or partial exemption from school attendance under the bye-laws of the district, or for employment under this section.

The term "certified efficient school" is defined by sec. 48.

The Factory Acts are defined by sec. 48. The definition does not include the Coal Mines Regulation Act, 1887 (50 & 51 Vict., c. 58). For provisions of the Factory and Workshop Act, 1901, and the Coal Mines Regulation Act, 1887, as to the attendance of children at

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